U.S. Customs and Border Protection

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ANCHOVY OIL

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to the tariff classification of anchovy oil.

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 modifying one ruling letter concerning tariff classification of oils derived from anchovies (anchovy oil) under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is modifying any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 57, No. 17, on May 3, 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EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 8, 2023.

FOR FURTHER INFORMATION CONTACT: Brent Keller, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0358.

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. 17, on May 3, 2023, proposing to modify one ruling letter pertaining to the tariff classification of anchovy oil. 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 modifying any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In New York Ruling Letter (NY) N311042, dated April 8, 2020, CBP classified anchovy oil in heading 1516, HTSUS, specifically in subheading 1516.20.9000, HTSUS Annotated (HTSUSA), which provides for "Animal or vegetable fats and oil and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinized, whether or not refined, but not further prepared: Other." CBP has reviewed NY N311042 and has determined the ruling letter to be in error. It is now CBP's position that anchovy oil is properly classified in heading 1516, HTSUS, specifically in subheading in subheading 1516.10.0000, HTSUSA, which provides for "Animal, vegetable or microbial fats and oil and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinized, whether or not refined, but not further prepared: Animal fats and oils and their fractions."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N311042 with respect to the tariff classification of anchovy oil and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H329655, 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 H329655

July 12, 2023
OT:RR:CTF:FTM H329655 BJK
CATEGORY: Classification
TARIFF NO.: 1516.10.0000

MR. MICHAEL DAHM
COLE INTERNATIONAL USA INC.
1775 BASELINE ROAD
GRAND ISLAND, NY 14072

RE: Modification of NY N311042; Classification of Anchovy Oil

DEAR MR. DAHM:

This is in reference to New York Ruling Letter (NY) N311042, dated April 8, 2020, concerning the tariff classification of Omega-3 Food Grade Oils imported from China, specifically oils derived from anchovies (anchovy oil) and a marine microalgae (*Schizochytrium limacinum*) (algae oil), respectively. In that ruling, U.S. Customs and Border Protection ("CBP") classified the oils under subheading 1516.20.9000, Harmonized Tariff Schedule of the United States (Annotated) (HTSUSA), which provides for "Animal or vegetable fats and oil and their fractions, partly or wholly hydrogenated, interesterified, re-esterified or elaidinized, whether or not refined, but not further prepared: Vegetable fats and oils and their fractions: Other." We have reviewed NY N025677 and find it to be in error regarding the tariff classification of anchovy oil under subheading 1516.20.9000, HTSUSA.[1] This ruling only concerns the classification of anchovy oil. For the reasons set forth below, we hereby modify NY N311042.

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 May 3, 2023, in Volume 57, Number 17, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

NY N311042 described the product at issue as follows:

The subject merchandise under review is oils derived from anchovy and a marine microalgae (Schizochytrium limacinum), respectively. According to the flowchart submitted upon request each article will be undergo refining, deacidification, esterification, washing, molecular distillation, re-esterification, winterization, deodorization, decoloration and the addition of an antioxidant (tocopherols). The Anchovy Oil and Algae Oil will be imported in steel drums with a net weight of 190 kilogram.

ISSUE:

Whether anchovy oil is classified under subheading 1516.10, HTSUS, as "Animal fats and oils and their fractions" or under subheading 1516.20, HTSUS, as "Vegetable fats and oils and their fractions"?

[1] NY N311042, dated April 8, 2020, used the 2020 subheading 1516.20.9000, HTSUSA, for its ruling. As of 2023, subheading 1516.20.9000, HTSUSA, has been renumbered to subheading 1516.20.9100, HTSUSA.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States ("HTSUS") is made in accordance with the General Rules of Interpretation ("GRI"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied in order.

The 2023 HTSUS provisions under consideration are as follows:

1516	Animal, vegetable or microbial fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinized, whether or not refined, but not further prepared:
1516.10	Animal fats and oils and their fractions
1516.20	Vegetable fats and oils and their fractions

* * *

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, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The EN for Chapter 15, HTSUS, provides in pertinent part that:

(A) This Chapter covers:

(1) Animal, vegetable or microbial fats and oils, whether crude, purified or refined or treated in certain ways (e.g., boiled, sulphurised or hydrogenated).

* * *

The EN for heading 15.16, HTSUS, provides in pertinent part that:

This heading covers animal, vegetable or microbial fats and oils, which have undergone a specific chemical transformation of a kind mentioned below, but have not been further prepared.

In NY N311042, anchovy oil is classified under subheading 1516.20, HTSUS, which provides for "Animal, vegetable or microbial fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinized, whether or not refined, but not further prepared: Vegetable fats and oils and their fractions." At the outset, we note the error of classifying oil derived from anchovies under subheading 1516.20, HTSUS, as "vegetable fats and oils and their fractions."

Based on its description, composition, and definition, the subject anchovy oil is derived from anchovies. The Court of International Trade has found that anchovies are a small fish belonging to the order Clupeiformes and the family Engraulidae. *See Alexandria Int'l, Inc., v. United States*, 13 C.I.T. 689, 693 (August 31, 1989). As a fish, anchovies belong to a group of animals considered aquatic vertebrates. Oil derived from anchovies, therefore, are considered "animal fats and oils," and not "vegetable fats and oils." Consequently, anchovy oil is classified under subheading 1516.10.00, HTSUS, which provides for animal fats and oils and their fractions.

HOLDING:

By application of GRI 1, the anchovy oil is classified under subheading 1516.10.00, HTSUS, which provides for: "Animal, vegetable or microbial fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinized, whether or not refined, but not further prepared: Animal fats and oils and their fractions." The 2023 column one, general duty rate for this subheading is 7 cents per kilogram.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 1516.10.00, HTSUS, unless specifically excluded, are subject to an additional 7.5 percent *ad valorem* rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.15, HTSUS, in addition to subheading 1516.10.00, HTSUS, listed above.

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

EFFECT ON OTHER RULINGS:

NY N311042, dated April 4, 2020, 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

cc: Mr. Harry Hu
Skuny BioScience Co., Ltd.
No. 81 Industry Rd.
Pujiang Industry Park
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EXTENSION AND MODIFICATION OF THE NATIONAL CUSTOMS AUTOMATION PROGRAM TEST CONCERNING THE SUBMISSION THROUGH THE AUTOMATED COMMERCIAL ENVIRONMENT OF CERTAIN UNIQUE ENTITY IDENTIFIERS FOR THE GLOBAL BUSINESS IDENTIFIER EVALUATIVE PROOF OF CONCEPT

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

ACTION: General notice.

SUMMARY: On December 2, 2022, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** announcing a National Customs Automation Program Test concerning the submission of unique entity identifiers for the Global Business Identifier (GBI) Evaluative Proof of Concept (EPoC). This document republishes and supersedes the notice published on December 2, 2022, extends the test period from July 21, 2023, through February 14, 2024, provides the correct web address for interested parties to use to obtain the Legal Entity Identifier (LEI), clarifies that CBP will allow participants to transmit one or more of the three entity identifiers, and makes additional minor technical and conforming corrections.

DATES: The GBI EPoC commenced on December 19, 2022, and will continue through February 14, 2024, subject to any extension, modification, or early termination as announced in the **Federal Register**. CBP began to accept requests from importers of record and licensed customs brokers to participate in the test on December 2, 2022, and CBP will continue to accept such requests until the GBI EPoC concludes. Public comments on the test are invited and may be submitted to the address set forth below, at any time during the test period.

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Julie L. Stoeber, Branch Chief, 1USG, Interagency Collaboration Division, Trade Policy and Programs Directorate, Office of Trade, U.S. Customs and Border Protection, at (202) 945–7064 or via email at *GBI@cbp.dhs.gov,* with a subject line reading "Global Business Identifier Test-GBI." For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, importers of record and licensed customs brokers should contact their assigned ACE or ABI client representatives, respectively. Interested parties without an assigned client representative should direct their questions to Tonya Perez, Director, Client Services Division, Office of Trade, U.S. Customs and Border Protection, at (571) 421–7477 or via email at *clientrepoutreach@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: On December 2, 2022, U.S. Customs and Border Protection (CBP) published a General Notice (the December 2 Notice) in the **Federal Register** (87 FR 74157) announcing a National Customs Automation Program (NCAP) Test concerning the submission through the Automated Commercial Environment (ACE) of certain unique entity identifiers for the Global Business Identifier (GBI) Evaluative Proof of Concept (EPoC). This document republishes and supersedes the December 2 Notice, with minor technical and conforming corrections, in addition to the following three changes.

First, the test period has been extended from July 21, 2023, through February 14, 2024. Second, this notice provides the correct web address for interested parties to use to obtain the Legal Entity Identifier (LEI). Specifically, section III.A. of the December 2 Notice stated that an interested party may obtain its own GBI by contacting Dun and Bradstreet (D&B) regarding the Data Universal Numbering System (D–U–N–S®); GS1 regarding the Global Location Number (GLN); and the Global Legal Entity Identifier Foundation (GLEIF) regarding the LEI. Unfortunately, the web address provided in the December 2 Notice for obtaining the LEI did not send participants to the GLEIF domain, but rather to the LEI Register, which is one of many third-party entities that assigns LEI numbers. The correct web address for the GLEIF domain is *https://www.gleif.org/en/about-lei/get-an-lei-find-lei-issuing-organizations.* From this website, participants can choose from a list of certified third-party entities that provide LEIs. This allows participants to obtain an LEI number from the entity that best meets the participant's needs. Lastly, this notice clarifies that CBP will allow participants to provide one or more of the three identifiers for the manufacturers, shippers, and sellers (optionally, exporters, distributors, and packagers) of merchandise covered by specified types of entries which are limited for purposes of this test to certain commodities and countries of origin, and that CBP will not require transmission of all three identifiers to participate in the test.

For ease of reference, the December 2 Notice is republished below, with the correct web address and other minor technical and conforming corrections.

I. Background

A. The National Customs Automation Program

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Customs Modernization Act) (Pub. L. 103–182, 107 Stat. 2057, 2170,

December 8, 1993) (19 U.S.C. 1411). Through the NCAP, the thrust of customs modernization was focused on informed trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing, intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while facilitating compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality, which update the system and add new functionality.

Sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411–1414), as amended, define and list the existing and planned components of the NCAP (Section 411), promulgate program goals (Section 412), provide for the implementation and evaluation of the program (Section 413), and provide for Remote Location Filing (Section 414). Section 411(a)(1)(A) lists the electronic entry of merchandise, Section 411(a)(1)(B) lists the electronic entry summary of required information, and Section 411(a)(1)(D) lists the electronic transmission of manifest information, as existing NCAP components. Section 411(d)(2)(A) provides for the periodic review of data elements collected in order to update the standard set of data elements, as necessary.

B. Global Business Identifier Evaluative Proof of Concept (GBI EPoC)

ACE is the system through which the U.S. Government has implemented the "Single Window," the primary system for processing trade-related import and export data required by the Partner Government Agencies (PGAs) that work alongside CBP in regulating specific commodities. The transition away from paper-based procedures has resulted in faster, more streamlined processes for both the U.S. Government and industry. To continue this progress, CBP began working with the Border Interagency Executive Council (BIEC) and the Commercial Customs Operations Advisory Committee (COAC), starting in 2017, to discuss the continuing viability of the data element known as the manufacturer or shipper identification code (MID).

Currently, importers of record provide the MID at the time of filing of the entry summary. *See generally* 19 CFR part 142. The 13-digit MID is derived from the name and address of the manufacturer or shipper, as specified on the commercial invoice, by applying a code constructed pursuant to instructions specified by CBP. *See* Customs Directive No. 3550–055, dated November 24, 1986 (available online at *https://www.cbp.gov/sites/default/files/documents/3550–055_3.pdf*). Although use of the MID has served CBP and the international trade community well in the past, it has become apparent that the MID is not always a consistent or unique number. For example, the MID is based upon the manufacturer or shipper name, address, and country of origin, and this data can change over time and/or result in the same MID for multiple entities. Also, while the MID provides limited identifying information, other global unique identifiers capture a broader swath of pertinent information regarding the entities with which they are associated (*e.g.,* legal ownership of businesses, specific business and global locations, and supply chain roles and functions). Changes in international trade and technology for tracking the flow of commodities have presented an opportunity for CBP and PGAs to explore new processes and procedures for identifying the parties involved in the supply chains of imported goods.

CBP has thus engaged in regular outreach with stakeholders, including, but not limited to, importers of record, licensed customs brokers, trade associations, and PGAs, with a goal of obtaining meaningful feedback on their existing systems and operations in order to establish a mutually beneficial global entity identifier system. As a result of these discussions, CBP developed the Global Business Identifier Evaluative Proof of Concept (GBI EPoC), which is an interagency trade transformation project that aims to test and develop a single entity identifier solution for CBP and PGAs to achieve trade facilitation and trade security by obtaining deeper insight into the legal structure of "who is who" across the spectrum of trade entities, and to understand more clearly ownership, affiliation, and parent-subsidiary relationships.

For purposes of the GBI EPoC, ACE has been modified to permit test participants to provide the following entity identifiers (GBIs) associated with manufacturers, shippers, and sellers of merchandise covered by entries that meet the GBI EPoC criteria (commodity + country of origin): nine (9)-digit Data Universal Numbering System (D–U–N– S®), thirteen (13)-digit Global Location Number (GLN), and twenty (20)-digit Legal Entity Identifier (LEI). These GBIs will be provided in addition to other required entry data (which may include

the MID); any GBIs associated with the importer of record itself need not be provided as part of this test. The GBIs associated with the manufacturers, shippers and sellers will be provided with the CBP Form 3461 (Entry/ Immediate Delivery) data transmission via the Automated Broker Interface (ABI) in ACE for formal entries for consumption ("entry type 01" in ACE) and informal entries ("entry type 11" in ACE). CBP will then access the underlying data (GBI data) associated with the D–U–N–S®, GLN, and LEI, as set forth in the agreements that CBP has entered into with Dun & Bradstreet (D&B), GS1, and the Global Legal Entity Identifier Foundation (GLEIF), respectively, in order to connect a specific entry and merchandise to a more complete picture of those entities' ownership, structure, and affiliations, among other information. D&B, GS1, and GLEIF are collectively referred to as the identity management companies (IMCs).

Through the GBI EPoC, CBP aims to leverage existing entity identifiers—the D–U–N–S®, GLN, and LEI—to develop a systematic, accurate, and efficient method for the trade to report, and the U.S. Government to uniquely identify, legal business entities, their different business locations and addresses, and their various functions and supply chain roles. CBP will consider whether these three GBIs, singly, or in concert, ensure that CBP and PGAs receive standardized trade data in a universally compatible trade language. Moreover, CBP will examine whether the GBIs submitted to CBP can be easily verified, thus reducing uncertainties that may be associated with the information related to shipments of imported merchandise. CBP will also consider whether the GBI EPoC may ultimately prove to be a more far-reaching, interagency initiative, one that keeps with the vision and actualized promise of the "Single Window," by providing better visibility into the supply chain for CBP and PGAs, thereby further reducing paper processing, expediting cargo release, and enhancing the traceability of supply chains.

II. Authorization for the Test

The Customs Modernization Act authorizes the Commissioner of CBP to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The GBI EPoC is authorized pursuant to 19 CFR 101.9(b), which provides for the testing of NCAP programs or procedures. *See* T.D. 95–21, 60 FR 14211 (March 16, 1995).

III. Conditions for the Test

The test is voluntary, and importers of record and licensed customs brokers who wish to participate in the test must comply with all of the

conditions set forth below. The full effect of access to additional entity-related data based on submission of the GBIs will be a key evaluation metric of the test.

Participation in the test will provide test participants with the opportunity to test and give feedback to CBP on the GBI EPoC design and scope. Participation may also enable test participants to establish and test their digital fingerprints, such as more accurately identifying certain parties involved in their supply chains. In addition, participation may allow the trade community to better manage and validate their data and streamline their import data collection processes. Lastly, test participation may allow for the wider application of entity identifiers that are currently providing broad sector coverage and enhanced data analysis.

A. Obtaining Global Business Identifier (GBI) Numbers

Importers of record and licensed customs brokers who are interested in participating in the test must arrange to obtain any combination of the required D–U–N–S®, GLN, and LEI entity identifiers (the GBIs) from the manufacturers, shippers, and sellers of merchandise that are intended to be covered by future entries that will meet the conditions of the test (commodity + country of origin). For purposes of providing the information required for the test, the parties are defined as follows for each covered entry:

- Manufacturer (or supplier)—The party that last manufactures, assembles, produces, or grows the goods or the party supplying the finished goods in the country from which the goods are leaving for the United States.
- Shipper—The party that enters into a contract for carriage with, and arranges for delivery of the goods to, a carrier or transport intermediary for transportation to the United States.
- Seller—The last known party by whom the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the owner of the goods must be provided.

Optionally, test participants may also arrange to obtain the GBIs for exporters, distributors, and packagers that will be associated with these future entries and provide them to CBP on qualifying entries covered by this test.

A party may obtain its own GBI by contacting Dun and Bradstreet (D&B) at *https://www.dnb.com/duns-number.html,* regarding the D–U–N–S®; GS1 at *https://www.gs1.org/standards/id-keys/gln,* regarding the GLN; and the Global Legal Entity Identifier Foundation (GLEIF) at *https://www.gleif.org/en/about-lei/get-an-lei-find-lei-issuing-organizations,* regarding the LEI.

Once the manufacturers, shippers, and sellers (and, optionally, the exporters, distributors, and packagers) have obtained their own GBIs (the D–U– N–S®, GLN, and LEI), these parties should provide the resulting GBIs to the relevant importer of record or licensed customs broker participating in the test. If these parties experience any difficulty with obtaining any of the GBIs, the importer of record or licensed customs broker seeking to participate in the test should reach out to CBP by email at *GBI@cbp.dhs.gov.* The test participant is not required to obtain or submit GBIs pertaining to its own entity.

Importers of record and licensed customs brokers are reminded that they are responsible for obtaining any necessary permissions with respect to providing to CBP the GBIs for manufacturers, shippers, and sellers (and, optionally, for exporters, distributors, and packagers) in the supply chains of the imported merchandise for which they file the specified types of entries subject to the conditions of the test (commodity + country of origin). Therefore, prior to submitting their request to participate in the test to CBP, as discussed below, importers of record and licensed customs brokers should consult with these parties to ensure that these parties are willing to grant any necessary permissions to share their GBIs (which will also result in CBP's access to the underlying GBI data associated with those GBIs, as described above) with CBP under the auspices of the test.

B. Submission of Request To Participate in the GBI EPoC

The test is open to all importers of record and licensed customs brokers provided that these parties have requested permission and are approved by CBP to participate in the test. Importers of record and licensed customs brokers seeking to participate in the test should email the GBI Inbox (*GBI@cbp.dhs.gov*) with the subject heading "Request to Participate in the GBI EPoC." As part of their request to participate, importers of record and licensed customs brokers must agree to provide available GBIs with entry filings for merchandise that is subject to the conditions of the test and state that they intend to participate in the test. The request must include the potential participant's filer code and evidence that it has obtained at least one of the three identifiers (D–U–N–S®, GLN, and LEI), or is in the process of obtaining an identifier, from the manufacturers, shippers, and sellers (and, optionally, exporters, distributors, and packagers) of merchandise that is subject to the conditions of the test (commodity + country of origin). Potential participants must also advise that they intend to import commodities that are subject to the test from the countries of origin that are subject to the test.

Test participants who are importers of record and do not self-file must advise CBP in their request that they have authorized their licensed customs broker(s) to file qualifying entries under the test on their behalf. Test participants who are licensed customs brokers must advise CBP that they have been authorized to file qualifying entries on behalf of importers of record whose shipments meet the test criteria (commodity + country of origin), as set forth below.

CBP began accepting requests to participate in the test on December 2, 2022, and will continue to accept them until the test concludes. Anyone providing incomplete information, or otherwise not meeting the test requirements, will be notified by email, and given the opportunity to resubmit the request to participate in the test.

C. Approval of GBI EPoC Participants

A party who wishes to participate in this test is eligible to do so as long as it is an importer of record or licensed customs broker who files type 01 (formal) or type 11 (informal) entries of merchandise that meet the conditions of the test (commodity + country of origin), and that party obtains the required GBIs from its supply chain partners. After receipt of a request to participate in the test, CBP will notify, by email, the importers of record and licensed customs brokers who are approved for participation and inform them of the starting date of their participation (noting that test participants may have different starting dates). Test participants must provide the GBIs they have received to CBP prior to the starting date of their participation (participants will also provide the GBIs to CBP again with each qualified entry filing meeting the requirements of the test). Test participants are considered to be bound by the terms and conditions of this notice and any subsequent modifications published in the **Federal Register**.

D. Criteria for Qualifying Entries

1. Commodities Subject to the GBI EPoC

The test will be limited to type 01 and type 11 entries of certain commodities, specifically alcohol, toys, seafood, personal items, and medical devices. Accordingly, CBP has limited the test to entries of merchandise classifiable in specific subheadings of Chapters 3, 16, 22, 30, 33, 63, 90, and 95 of the Harmonized Tariff Schedule of the United States (HTSUS), as set forth below.

Chapter 3: 0306.16.0003; 0306.16.0006; 0306.16.0009; 0306.16.0012; 0306.16.0015; 0306.16.0018; 0306.16.0021; 0306.16.0024; 0306.16.0027; 0306.16.0040; 0306.17.0004; 0306.17.0005; 0306.17.0007; 0306.17.0008; 0306.17.0010;

0306.17.0011; 0306.17.0013; 0306.17.0014; 0306.17.0016; 0306.17.0017; 0306.17.0019; 0306.17.0020; 0306.17.0022; 0306.17.0023; 0306.17.0025; 0306.17.0026; 0306.17.0028; 0306.17.0029; 0306.17.0041; 0306.17.0042; 0306.35.0020; 0306.35.0040; 0306.36.0020; 0306.36.0040; 0306.95.0020; and 0306.95.0040.

Chapter 16: 1605.21.0500; 1605.21.1020; 1605.21.1030; 1605.21.1050; 1605.29.0500; 1605.29.1010; and 1605.29.1040.

Chapter 22: 2203.00.0030; 2203.00.0060; 2203.00.0090; 2204.10.0030; 2204.10.0065; 2204.10.0075; 2204.21.5005; 2204.21.5015; 2204.21.5025; 2204.21.5025; 2204.21.5028; 2204.21.5035; 2204.21.5040; 2204.21.5050; 2204.21.5055; 2204.21.5060; 2204.21.8030; 2204.21.8060; 2208.30.3030; 2208.30.3060; 2208.40.4000; and 2208.60.2000.

Chapter 30: 3005.90.5010; 3005.90.5090.

Chapter 33: 3304.99.5000.

Chapter 63: 6307.90.6800.

Chapter 90: 9018.39.0020; 9018.39.0040; 9018.39.0050; and 9018.90.8000.

Chapter 95: 9503.00.0011; 9503.00.0013; 9503.00.0071; 9503.00.0073; and 9503.00.0090.

Test participants are encouraged to submit GBIs with all qualified entry filings that meet the conditions of the test so that CBP has a fulsome data set to evaluate; however, entries will not be rejected if GBIs are not submitted. Additional commodities may be added as CBP refines the scope of the test. CBP will announce the HTSUS subheadings for any additional commodities as a modification to the test in a subsequent **Federal Register** notice.

2. Countries of Origin Subject to the GBI EPoC

CBP has limited the test to entries of imported merchandise with the following countries of origin, which have been identified as representing both countries with a high risk of non-compliance with U.S. import laws and those that are partner countries, while covering a diversity of jurisdictions: (1) Australia; (2) Canada; (3) China; (4) France; (5) Italy; (6) Mexico; (7) New Zealand; (8) Singapore; (9) United Kingdom; and (10) Vietnam. Additional countries of origin may be added as CBP refines the scope of the test. CBP will announce any additional countries of origin as a modification to the test in a subsequent **Federal Register** notice.

E. Filing Entries With GBIs (via ABI in ACE)

Test participants must coordinate with their software vendors or technical teams to ensure that their electronic systems are capable of

transmitting the D–U–N–S®, GLN, and LEI entity identifiers to CBP. During this test, CBP will only accept electronic submissions of GBIs via ABI in ACE with CBP Form 3461 (Entry/Immediate Delivery) filings for type 01 and type 11 entries. Upon selection to participate in the test, the test participants will be provided with technical information and guidance regarding the transmission of the GBIs to CBP with the CBP Form 3461 filings. The assigned ABI client representatives of the test participants will provide additional technical support, as needed.

F. CBP Access to Underlying GBI Data Associated With GBIs

As part of the test, CBP has entered into agreements with D&B, GS1, and GLEIF (the IMCs) for limited access to the underlying data ("GBI data") that is associated with the GBIs for the duration of the test and for testing of CBP's automated systems.[1] The data elements for which CBP has entered into agreements with D&B, GS1, and GLEIF may include, but are not limited to: (1) entity identifier numbers, (2) official business titles; (3) names; (4) addresses; (5) financial data; (6) trade names; (7) payment history; (8) economic status; and (9) executive names. The data elements will be examined as part of the test.

Consistent with the agreements, CBP may access GBI data, combine it with CBP data, and evaluate the GBIs that the test participants provide with an entry filing. The GBI data will assist CBP and PGAs in determining the optimal combination of the three entity identifiers (the GBIs) that will provide the U.S. Government with sufficient entity data needed to support identification, monitoring, and enforcement procedures to better equip the U.S. Government to focus on high-risk shipments and bad actors.

CBP will process entries submitted pursuant to the test by analyzing the GBIs submitted via ABI in ACE and ensuring that the GBIs are submitted correctly. CBP will then evaluate the submitted entries to assess the ease and cost of obtaining each of the GBIs, evaluating each GBI to ensure that it is being submitted properly per the technical requirements that will be set forth in CBP and Trade Automated Interface Requirements (CATAIR), and ensuring that CBP is able to validate that each GBI is accurate using the underlying GBI data from the IMCs or otherwise known to CBP.

[1] As noted above, D&B, GS1, and GLEIF are IMCs. The GBI data consists of data provided by the relevant entity to the IMCs in order to generate a GBI—the D–U–N–S®, GLN, or LEI. GBIs allow CBP to link the underlying GBI data to specific entities and entries.

G. Partner Government Agencies (PGAs)

Partner Government Agencies (PGAs) are important to the success of the test. Certain PGAs, which may receive GBIs and GBI data and are intended as core test beneficiaries, may use the GBIs and GBI data to improve risk management and import compliance. This may result in smarter, more efficient, and more effective compliance efforts. CBP will announce the PGAs who will receive GBIs and GBI data pursuant to the test in a notice to be published in the **Federal Register** at a later date.

H. Duration of Test

The test began on December 19, 2022, and will run through February 14, 2024, subject to any extensions, modifications or early termination as announced by way of a notice to be published in the **Federal Register**.

I. Misconduct Under the Test

Misconduct under the test may include, but is not limited to, submitting false GBIs with an entry filing. Currently, CBP does not plan to assess penalties against GBI EPoC participants that fail to timely and accurately submit GBIs during the test. CBP also does not anticipate shipment delays due to the failure to file or the erroneous filing of GBIs. However, test participants are expected to follow all other applicable regulations and requirements associated with the entry process.

After an initial six-month period (or at such earlier time as CBP deems appropriate), a test participant may be subject to discontinuance from participation in this test for any of the following repeated actions:

- Failure to follow the terms and conditions of this test;
- Failure to exercise due diligence in the execution of participant obligations;
- Failure to abide by applicable laws and regulations that have not been waived; or
- Failure to deposit duties or fees in a timely manner.

If the Director, Interagency Collaboration Division (ICD), Trade Policy and Programs (TPP), Office of Trade (OT), finds that there is a basis to discontinue a participant's participation in the test, then CBP will provide written notice, via email, proposing the discontinuance with a description of the facts or conduct supporting the proposal. The test participant will be offered the opportunity to respond to the Director's proposal in writing within 10 business days of the date of the written notice. The response must be submitted to the ICD Di-

rector, TPP, OT, by emailing *GBI@cbp.dhs.gov,* with a subject line reading "Appeal—GBI Discontinuance."

The Director, ICD, will issue a final decision in writing on the proposed action within 30 business days after receiving a timely filed response from the test participant, unless such time is extended for good cause. If no timely response is received, the proposed notice becomes the final decision of CBP as of the date that the response period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the response process under this paragraph has been concluded with a written decision that is adverse to the test participant, which will be provided via email.

J. Confidentiality

Data submitted and entered into the Automated Commercial Environment (ACE) may include confidential commercial or financial information which may be protected under the Trade Secrets Act (18 U.S.C. 1905), the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a). However, as stated in previous notices, participation in this or any of the previous ACE tests is not confidential and, therefore, upon receipt of a written Freedom of Information Act request, the name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

IV. Comments on the Test

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program. Comments should be submitted via email to *GBI@cbp.dhs.gov,* with the subject line reading "Comments/Questions on GBI EPoC."

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB).

The new GBI collection of information gathered under this test has been approved by OMB in accordance with the requirements of the PRA and assigned OMB control number 1651– 0141. In addition, the Entry/Immediate Delivery Application and ACE Cargo Release (CBP

Form 3461 and 3461 ALT) has been updated to accommodate the GBI test, and approved by OMB under OMB control number 1651–0024.

VI. Evaluation Criteria

The test is intended to evaluate the feasibility of replacing the current manufacturer or shipper identification code (MID) with unique entity identifiers (GBIs) to more accurately identify legal business entities, their different business locations and addresses, as well as their various functions and supply chain roles, based upon information derived from the unique D–U–N–S®, GLN, and LEI entity identifiers. The test will assist CBP in enforcing applicable laws and protecting the revenue, while fulfilling trade modernization efforts by assisting the agency in verifying the roles, functions and responsibilities that various entities play in a given participant's importation of merchandise. CBP's evaluation of the test, including the review of any comments submitted to CBP during the duration of the test, will be ongoing with a view to possible extension or expansion of the test.

CBP will evaluate whether the test: (1) improves foreign entity data for trade facilitation, risk management, and statistical integrity; (2) ensures U.S. Government access to foreign entity data; (3) institutionalizes a global, managed identification system; (4) implements a cost-effective solution; (5) obtains stakeholder buy-in; and (6) facilitates legal compliance across the U.S. Government. At the conclusion of the test, an evaluation will be conducted to assess the efficacy of the information received throughout the course of the test. The final results of the evaluation will be published in the **Federal Register** as required by section 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)).

Should the GBI EPoC be successful and ultimately be codified under the CBP regulations, CBP anticipates that this data would greatly enhance ongoing trade entity identification and resolution, reduce risk, and improve compliance operations. CBP would also anticipate greater supply chain visibility and verified, validated information on legal entities, which will support better decision-making during customs clearance processes.

Dated: July 18, 2023.

JOHN P. LEONARD,
Acting Executive Assistant Commissioner,
Office of Trade.

[Published in the Federal Register, July 21, 2023 (88 FR 47154)]

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS (NO. 05 2023)

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in May 2023. A total of 175 recordation applications were approved, consisting of 11 copyrights and 164 trademarks.

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

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

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

CBP IPR RECORDATION — MAY 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 23–00087	4/28/2023	4/28/2043	It's a girl! Foot	Anagram International, Inc.	No
COP 23–00088	4/28/2023	4/28/2043	37273 - Magical Unicorn.	Anagram International, Inc. Address: 7700 Anagram Drive, Eden Prairie, MN, 55339.	No
COP 23–00089	4/28/2023	4/28/2043	42373 - Big Cuddly Teddy Bear.	Anagram International, Inc. Address: 7700 Anagram Drive, Eden Prairie, MN, 55344.	No
COP 23–00090	4/28/2023	4/28/2043	31299 - Rainbow Unicorn.	Anagram International, Inc. Address: 7700 Anagram Drive, Eden Prairie, MN, 55339.	No
COP 23–00091	5/4/2023	5/4/2043	Zonai Authentication Seal.	Nintendo of America Inc., Transfer: By written agreement. Address: 4600 150th Avenue NE, Redmond, WA, 98052, United States.	No
COP 23–00092	5/5/2023	5/5/2043	Ancient Royal Crest.	Nintendo of America Inc., Transfer: By written agreement. Address: 4600 150th Avenue NE, Redmond, WA, 98052, United States.	No
COP 23–00093	5/5/2023	5/5/2043	Decayed Master Sword.	Nintendo of America Inc., Transfer: By written agreement. Address: 4600 150th Avenue NE, Redmond, WA, 98052, United States.	No
COP 23–00094	5/11/2023	5/11/2043	MAD SCIENTIST.	VP Racing Fuels, Inc., Transfer: By written agreement. Address: 204 East Rhapsody, San Antonio, TX, 78216, United States.	No
COP 23–00095	5/16/2023	5/16/2043	The Legend of Zelda: Tears of the Kingdom.	Nintendo of America Inc., Transfer: By written agreement. Address: 4600 150th Avenue NE, Redmond, WA, 98052, United States.	No

CBP IPR RECORDATION — MAY 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 23–00096	5/24/2023	5/24/2043	The Super Mario Bros. Movie.	Nintendo Studios LLC. Address: 4600 150th Avenue NE, Redmond, WA, 98052.	No
COP 23–00097	5/30/2023	5/30/2043	Bayonetta 3.	Nintendo of America Inc., Transfer: By written agreement. Address: 4600 150th Avenue NE, Redmond, WA, 98052, United States.	No
TMK 03–00506	5/8/2023	6/6/2033	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, SA	No
TMK 03–00650	5/10/2023	3/31/2033	ANAHEIM ANGELS AND DESIGN	ANAHEIM ANGELS L.P.	No
TMK 03–00664	5/5/2023	6/29/2033	ERMENEGILDO ZEGNA	ERMENEGILDO ZEGNA CORPORATION	No
TMK 03–00709	5/9/2023	6/6/2033	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 03–00796	5/11/2023	9/1/2033	KCR ROYALS AND DESIGN	KANSAS CITY ROYALS BASEBALL CORP	No
TMK 04–00026	5/5/2023	6/29/2033	ERMENEGILDO ZEGNA	Ermenegildo Zegna Corporation	No
TMK 04–00028	5/5/2023	7/19/2033	ERMENEGILDO ZEGNA	Ermenegildo Zegna Corporation	No
TMK 04–00050	5/9/2023	7/12/2033	YKK	YKK CORPORATION	No
TMK 05–00115	5/11/2023	2/17/2033	NFL THROWBACKS	NFL PROPERTIES LLC	No
TMK 05–00816	5/2/2023	8/4/2033	CHICAGO (STYLIZED)	CHICAGO WHITE SOX, LTD.	No
TMK 05–00826	5/10/2023	8/20/2033	COLTS AND DESIGN	HOUSTON ASTROS, LLC.	No
TMK 05–00831	4/27/2023	6/23/2033	DESIGN OF BASEBALL GUY	CINCINNATI REDS, THE	No
TMK 05–00853	5/4/2023	8/11/2033	SOX	CHICAGO WHITE SOX LTD.	No
TMK 05–01026	5/1/2023	10/15/2033	XK	JAGUAR LAND ROVER LIMITED	No
TMK 07–00442	5/18/2023	6/4/2033	NATURAL AMERICAN SPIRIT	Santa Fe Natural Tobacco Company, Inc.	No
TMK 08–00196	5/2/2023	5/18/2033	VAN HEUSEN	ABG IZOD LLC	No
TMK 11–00484	5/12/2023	2/5/2033	POKÉMON	Nintendo of America Inc.	
TMK 12–00301	4/11/2022	2/20/2032	BOTOX	Allergan, Inc.	No

CBP IPR RECORDATION — MAY 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 12–01034	4/28/2023	3/18/2033	CAT	Caterpillar Inc.	No
TMK 13–00303	5/1/2023	4/15/2033	KIRBY	Nintendo of America Inc.	No
TMK 13–00384	4/28/2023	5/25/2033	NOKIA	Nokia Corporation	No
TMK 13–00447	4/28/2023	7/2/2033	UNIMOUNT	Lightforce USA, Inc. d/b/a Nightforce Optics, Inc.	No
TMK 13–00449	4/28/2023	7/2/2033	ULTRALITE	Lightforce U.S.A., Inc. d/b/a Nightforce Optics, Inc.	No
TMK 13–00450	4/28/2023	7/2/2033	NXS	Lightforce U.S.A., Inc. d/b/a Nightforce Optics, Inc.	No
TMK 13–00488	5/19/2023	5/19/2033	URBAN ARMOR GEAR LOGO DESIGN	Urban Armor Gear, LLC	No
TMK 13–00501	5/12/2023	2/5/2033	PIKACHU	Nintendo of America Inc.	No
TMK 13–00670	5/1/2023	9/17/2033	JOINT JUICE	Premier Nutrition Corporation	No
TMK 13–01019	5/2/2023	5/4/2033	REI and Design	Recreational Equipment, Inc.	No
TMK 13–01055	5/2/2023	5/4/2033	REI	Recreational Equipment, Inc.	No
TMK 13–01171	5/15/2023	8/14/2033	RVU	RVU Alliance	No
TMK 14–00802	5/4/2023	5/5/2033	URBANA	Sobel Westex CORPORATION	No
TMK 14–01183	5/9/2023	7/2/2033	YAKULT LIGHT & DESIGN	Kabushiki Kaisha Yakult Honsha TA Yakult Honsha Co., Ltd.	No
TMK 15–00835	5/11/2023	4/22/2033	HERMES	Hermes International	No
TMK 15–01115	5/16/2023	2/13/2033	NAVY SEALS	The Department of the Navy agency of the united states government	No
TMK 15–01222	5/10/2023	8/7/2033	M MONSTER ENERGY (STYLIZED)	Monster Energy Company	No
TMK 16–00513	5/22/2023	7/3/2033	LONZA	LONZA LTD.	No
TMK 17–00020	4/27/2023	5/22/2033	KRUG	MHCS	No
TMK 17–00233	5/9/2023	9/8/2033	NINE WEST	ABG-NINE WEST, LLC	No

CBP IPR RECORDATION — MAY 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 17–00790	4/28/2023	10/2/2033	MOAR	Lightforce U.S.A., Inc. DBA Nightforce Optics, Inc.	No
TMK 18–00568	5/23/2023	5/26/2033	DESIGN OF STYLIZED CROSS	Performance Fabrics, Inc.	No
TMK 18–01157	5/30/2023	7/26/2033	PLASTI DIP	PLASTI DIP INTERNATIONAL, INC.	No
TMK 18–01218	5/12/2023	7/29/2033	ROLLIT	REPUBLIC TECHNOLOGIES (NA), LLC	No
TMK 19–00373	5/12/2023	3/25/2033	KEYTRUDA	Merck Sharp & Dohme Corp.	No
TMK 19–00531	5/5/2023	5/5/2033	LIFECELL SOUTH BEACH SKINCARE & Design	LIFECELL IP HOLDINGS, LLC	No
TMK 19–00774	5/26/2023	6/18/2033	LOEWE	Loewe S.A.	No
TMK 19–00897	5/17/2023	5/16/2033	GAP	GAP(APPAREL), LLC	No
TMK 19–01183	5/9/2023	6/26/2033	NEST (Stylized)	GOOGLE LLC	No
TMK 20–00269	5/12/2023	6/5/2033	JAVA POWERED AND DESIGN	ORACLE AMERICA, INC.	No
TMK 20–00520	5/11/2023	5/20/2033	TFT	TASK FORCE TIPS LLC	No
TMK 20–01124	5/3/2023	5/12/2033	KINSMART & DESIGN	KINTOY DIE-CASTING MANUFACTORY LIMITED	No
TMK 20–01164	5/11/2023	9/11/2033	MIAMI MARLINS	MARLINS TEAMCO LLC	No
TMK 20–01181	5/10/2023	8/14/2033	BLUE JAYS (Stylized)	Rogers Blue Jays Baseball Partnership general partnership	No
TMK 21–00948	5/19/2023	7/16/2033	Dr.Jart+ (STYLIZED)	Have & Be Co., Ltd.	No
TMK 22–00103	5/18/2023	4/8/2033	HP & DESIGN	HP HEWLETT PACKARD GROUP LLC	No
TMK 22–00207	5/2/2023	5/19/2033	CLEARER THINKING	Quincy Bioscience, LLC	No
TMK 22–00526	7/6/2022	9/21/2032	FRANCISCO OROZCO	Orozco Figueroa, Juan Francisco INDIVIDUAL	No
TMK 22–00877	5/19/2023	8/7/2033	GIA GIA KNOWLEDGE INTEGRITY EXCELLENCE 1931 & DESIGN	Gemological Institute of America, Inc.	No
TMK 22–00909	5/11/2023	8/14/2033	M (STYLIZED)	RESOURCE INTL INC.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 22–00932	5/11/2023	6/19/2033	SOUR PATCH KIDS & DESIGN	MONDELEZ CANADA INC. CANADA	No
TMK 22–01010	5/16/2023	8/7/2033	C-A-TRAINER	COMPOSITE RESOURCES, INC.	No
TMK 23–01650	4/26/2023	5/14/2032	OSPREY	Osprey Packs, Inc.	No
TMK 23–01651	4/26/2023	6/28/2033	NO MESS. NO WORRIES. ENJOY.	Boveda Inc	No
TMK 23–01652	4/27/2023	4/30/2026	OSPREY	Osprey Packs, Inc.	No
TMK 23–01653	4/27/2023	11/28/2032	OSPREY BIRD DESIGN	Osprey Packs, Inc.	No
TMK 23–01654	4/27/2023	2/15/2027	DESIGN OF LIGHTING BOLT	Intel Corporation	No
TMK 23–01655	4/27/2023	9/20/2027	FORGELINE	Forgeline Motorsports, LLC	No
TMK 23–01656	4/27/2023	4/23/2031	CAT & DESIGN	Caterpillar Inc.	No
TMK 23–01657	4/28/2023	6/27/2031	CATERPILLAR	Caterpillar Inc.	
TMK 23–01658	4/28/2023	7/11/2033	BLING	USA Vape Company LLC	No
TMK 23–01659	5/1/2023	10/5/2031	DESIGN OF HEART WITH LIGHTNING - DEFIBRILLATOR GRAPHIC	Koninklijke Philips N.V. NETHERLANDS	No
TMK 23–01660	5/2/2023	6/25/2033	AMPLIPREP	ROCHE MOLECULAR SYSTEMS, INC.	No
TMK 23–01661	5/2/2023	9/29/2031	SUNDIAL	SUNDIAL HERBS & HERBAL PRODUCTS LLC	No
TMK 23–01662	5/2/2023	7/24/2028	AVENIO	Roche Molecular Systems, Inc.	No
TMK 23–01663	5/4/2023	11/20/2032	GAS CONNECTOR DESIGN	Dormont Manufacturing Company	No
TMK 23–01664	5/4/2023	9/7/2032	HERO	Hero Cosmetics, Inc.	No
TMK 23–01665	5/4/2023	7/26/2032	HMG HARVEST MOON GEMS & DESIGN	Roberts, Dawn April	No
TMK 23–01666	5/4/2023	8/9/2027	CROW CANYON HOME & DESIGN	CP Squared, Inc	No
TMK 23–01667	5/5/2023	10/26/2032	MIGHTY PATCH & DESIGN	CHURCH & DWIGHT CO., INC.	No
TMK 23–01668	5/5/2023	3/1/2032	HERO	CHURCH & DWIGHT CO., INC.	No
TMK 23–01669	5/5/2023	10/13/2031	MICROPOINT FOR BLEMISHES	CHURCH & DWIGHT CO., INC.	No

CBP IPR RECORDATION — MAY 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01670	5/5/2023	10/30/2029	REJUVASKIN	ORIGINAL APPLICANT: Atlantic Medical Products, LLC 1402 W Swann Ave Tampa FLORIDAOWNER AT PUBLICATION: Atlantic Medical Products, LLC 1402 W Swann Ave Tampa FLORIDAORIGINAL REGISTRANT: Atlantic Medical Products, LLC 1402 W Swann Ave Tampa FLORIDA	No
TMK 23–01671	5/5/2023	7/9/2029	YOUR BLEMISH HERO	CHURCH & DWIGHT CO., INC.	No
TMK 23–01672	5/5/2023	7/24/2028	MIGHTY PATCH	CHURCH & DWIGHT CO., INC	No
TMK 23–01673	5/5/2023	12/2/2032	DESIGN OF GENERATOR	OdorStop, LLC	No
TMK 23–01674	5/5/2023	12/11/2028	TILE	Tile, Inc.	No
TMK 23–01675	5/10/2023	1/17/2030	AZZARO	L'OREAL SOCIÉTÉ ANONYME, FRANCE	No
TMK 23–01676	5/10/2023	6/18/2026	DRAKKAR NOIR	L'OREAL SOCIÉTÉ ANONYME	No
TMK 23–01677	5/10/2023	11/18/2032	AZZARO	L'OREAL SOCIÉTÉ ANONYME	No
TMK 23–01678	5/10/2023	3/19/2026	GUERLAIN	GUERLAIN 68 FRANCE	No
TMK 23–01679	5/10/2023	1/5/2034	VENTANA	ROCHE DIAGNOSTICS GERMANY	No
TMK 23–01680	5/11/2023	8/6/2027	VP RACING FUELS	VP Racing Fuels, Inc.	No
TMK 23–01681	5/11/2023	8/6/2027	VP RACING FUELS & DESIGN	VP Racing Fuels, Inc.	No
TMK 23–01682	5/11/2023	8/6/2027	VP RACING FUELS	VP Racing Fuels, Inc.	No
TMK 23–01683	5/10/2023	8/6/2027	VP RACING FUELS & DESIGN	VP Racing Fuels, Inc.	No
TMK 23–01684	5/10/2023	8/13/2027	VP RACING FUELS & DESIGN	VP Racing Fuels, Inc.	No
TMK 23–01685	5/10/2023	8/20/2027	VP RACING FUELS	VP Racing Fuels, Inc.	No
TMK 23–01686	5/10/2023	8/20/2027	VP RACING FUELS & DESIGN	VP Racing Fuels, Inc.	No
TMK 23–01687	5/10/2023	11/26/2033	LIGHTCYCLER	ROCHE DIAGNOSTICS GERMANY	No
TMK 23–01688	5/10/2023	4/25/2025	COAGUCHEK	Roche Diagnostics GERMANY	No

CBP IPR RECORDATION — MAY 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01689	5/10/2023	10/10/2027	CONFIRM	ROCHE DIAGNOSTICS GERMANY	No
TMK 23–01690	5/9/2023	2/4/2029	THE LOOK	PETELKA INVESTMENTS LTD. CANADA	No
TMK 23–01691	5/10/2023	7/12/2031	ATELIER COLOGNE	L'ORÉAL S.A. FRANCE	No
TMK 23–01692	5/10/2023	7/3/2032	OPTIVIEW	Roche Diagnostics GERMANY	No
TMK 23–01693	5/10/2023	12/11/2032	OCUSOFT BABY	OCuSOFT, Inc. CORPORATION	No
TMK 23–01694	5/11/2023	5/11/2034	DESIGN OF MAD SCIENTIST WITH FLAMES FOR HAIR	VP Racing Fuels, Inc.	No
TMK 23–01695	5/11/2023	10/7/2025	OUR PASSION IS YOUR PERFORMANCE	VP Racing Fuels, Inc.	No
TMK 23–01696	5/8/2023	1/20/2026	CIELE ATHLETICS	CIELE ATHLETICS INC. CANADA	No
TMK 23–01697	5/10/2023	1/18/2026	MUGLER	L'OREAL FRANCE	No
TMK 23–01698	5/10/2023	5/27/2028	ATELIER COLOGNE (STYLIZED)	L'Oreal FRANCE	No
TMK 23–01699	5/10/2023	12/4/2028	VENTANA	Roche Diagnostics GERMANY	No
TMK 23–01700	5/11/2023	9/25/2029	POT O' GOLD	INNOVATIVE GAMING, LLC	No
TMK 23–01701	5/10/2023	3/15/2031	HELENA RUBINSTEIN	L'OREAL FRANCE	No
TMK 23–01702	5/10/2023	9/8/2031	SUPACAZ (STYLIZED)	Sinyard, Anthony	No
TMK 23–01703	5/11/2023	11/10/2031	VP RACING FUELS VP HYDROCARBONS CO.	VP Racing Fuels, Inc.	No
TMK 23–01704	5/8/2023	11/24/2031	LEMON NADE & DESIGN	LEMONNADE, INC.	No
TMK 23–01705	5/11/2023	2/9/2032	MAKIN' POWER!	VP Racing Fuels, Inc.	No
TMK 23–01706	5/10/2023	5/1/2032	BENCHMARK	ROCHE DIAGNOSTICS GMBH LIMITED LIABILITY COMPANY, GERMANY	
TMK 23–01707	5/8/2023	7/26/2032	LEGACY MINDSET WHAT WILL REMAIN AS YOUR LEGACY? & DESIGN	Andrews, Elizabeth Ste	No

CBP IPR RECORDATION — MAY 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01708	5/10/2023	9/21/2032	ULTRAVIEW	ROCHE DIAGNOSTICS GMBH LIMITED LIABILITY COMPANY	No
TMK 23–01709	5/9/2023	8/9/2033	THOTH	Heretic Knives, LLC	No
TMK 23–01710	5/9/2023	8/9/2033	HYPERION	Heretic Knives, LLC	No
TMK 23–01711	5/9/2023	8/9/2033	SLEIGHT	Heretic Knives, LLC	No
TMK 23–01712	5/9/2023	8/9/2033	CLERIC	Heretic Knives, LLC	No
TMK 23–01713	5/12/2023	8/16/2026	Configuration of Motorcycle Handlebar	CYCRA, INC.	No
TMK 23–01714	5/12/2023	10/21/2025	TWO RECTANGLES DESIGN - ENTRESTO LOGO	NOVARTIS AG CH	No
TMK 23–01715	5/12/2023	6/29/2026	ENTRESTO	Novartis AG, SWITZERLAND	No
TMK 23–01716	5/12/2023	10/16/2027	BARBANCOURT	SOCIETE DU RHUM BARBANCOURT, T. GARDERE & CIE	No
TMK 23–01717	5/15/2023	7/14/2032	CONFIGURATION OF A LUGGAGE CART	WINSFORD CORPORATION	No
TMK 23–01718	5/15/2023	7/15/2033	STONE ISLAND	MONCLER S.P.A. ITALY	No
TMK 23–01719	5/15/2023	12/2/2028	STONE ISLAND	MONCLER S.P.A. ITALY	No
TMK 23–01720	5/16/2023	1/21/2029	STONE ISLAND	MONCLER S.P.A. ITALY	No
TMK 23–01721	5/16/2023	6/25/2024	DESIGN OF STAR	MONCLER S.P.A. ITALY	No
TMK 23–01722	5/17/2023	9/5/2028	VOLTZ	GT INDUSTRIAL PRODUCTS, LLC	No
TMK 23–01723	5/17/2023	6/20/2028	LEAF SHAVE	Leaf Shave Company LLC	No
TMK 23–01724	5/18/2023	9/8/2031	NISSAN & DESIGN	ORIGINAL APPLICANT: Nissan Jidosha Kabushiki Kaisha (also trading as Nissan Motor Co., Ltd.	No
TMK 23–01725	5/18/2023	12/22/2032	TOBACCO CHIEF DESIGN	Santa Fe Natural Tobacco Company, Inc.	No
TMK 23–01726	5/18/2023	8/16/2033	RAIDERS	Raiders Football Club, LLC	No
TMK 23–01727	5/18/2023	8/16/2033	COLTS	Indianapolis Colts, Inc	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01728	5/18/2023	4/14/2030	SAFEPASS	SafePass, Inc.	No
TMK 23–01729	5/19/2023	8/3/2032	IHEALTH	iHealth Labs Inc.	No
TMK 23–01730	5/19/2023	1/9/2029	PALYNZIQ	Biomarin Pharmaceutical Inc.	No
TMK 23–01731	5/22/2023	5/28/2033	OPZELURA	Incyte Holdings Corporation	No
TMK 23–01732	5/22/2023	11/9/2032	OPZELURA & DESIGN	Incyte Holdings Corporation	No
TMK 23–01733	5/22/2023	7/8/2028	KUVAN	Biomarin Pharmaceutical Inc.	No
TMK 23–01734	5/24/2023	4/4/2032	LEAF	Leaf Shave Company	No
TMK 23–01735	5/24/2023	5/2/2031	TOOL-LESS RE-ZERO	Armament Technology Inc. CANADA	No
TMK 23–01736	5/24/2023	5/4/2030	KEVLAR	E. I. du Pont de Nemours and Company	No
TMK 23–01737	5/24/2023	12/6/2032	COZY EARTH	COZY EARTH HOLDINGS, INC.	No
TMK 23–01738	5/24/2023	8/24/2032	COZY EARTH & DESIGN	COZY EARTH HOLDINGS, INC.	No
TMK 23–01739	5/24/2023	2/13/2029	DESIGN OF BAMBOO LEAF	COZY EARTH HOLDINGS, INC.	No
TMK 23–01740	5/24/2023	2/13/2029	COZY EARTH	COZY EARTH HOLDINGS, INC.	No
TMK 23–01741	5/23/2023	5/28/2027	CURLSMITH	Recipe Cosmetics Ltd	No
TMK 23–01742	5/24/2023	6/6/2031	KEVLAR	DUPONT SAFETY & CONSTRUCTION, INC	No
TMK 23–01743	5/24/2023	3/9/2028	ANTICA TERRA	MAKK WINE, LLC	No
TMK 23–01744	5/24/2023	8/23/2033	BLUELIGHTOS	Lipingdata Corporation	No
TMK 23–01745	5/24/2023	8/23/2033	THE LAZY SUSAN REVOLUTION	The Lazy Susan Revolution LLC	No
TMK 23–01746	5/25/2023	1/15/2030	OHANYAN	IMPORTERS DIRECT WHOLESALE CO., INC.	No
TMK 23–01747	5/25/2023	2/15/2033	HOLY HERBAHONEY	Holy Herb, LLC	No
TMK 23–01749	5/30/2023	12/11/2032	LIMCA	Meenaxi Enterpise, Inc.	No
TMK 23–01750	5/30/2023	12/11/2032	BOURNVITA	Meenaxi Enterpise, Inc.	No
TMK 23–01751	5/30/2023	12/11/2032	THUMS UP	Meenaxi Enterpise, Inc.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01752	5/31/2023	8/30/2033	SM	Microtech Knives, Inc.	No
TMK 23–01753	5/30/2023	8/30/2033	BOVIET SOLAR	Boviet Solar USA, Ltd.	No
TMK 23–01754	5/30/2023	8/30/2033	BOLDER THAN THE BLADE	Microtech Knives, Inc.	No

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS (NO. 06 2023)

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in June 2023. A total of 204 recordation applications were approved, consisting of 19 copyrights and 185 trademarks.

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

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

LAUREN O'STRICKER
Acting Chief,
Intellectual Property Enforcement Branch
Regulations and Rulings, Office of Trade

CBP IPR RECORDATION — JUNE 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 23–00098	6/5/2023	6/5/2043	BANANA DREAM ARTWORK	LooseLeaf International LLC.	No
COP 23–00099	6/5/2023	6/5/2043	BANANA CRUSH ARTWORK	LooseLeaf International LLC.	No
COP 23–00100	6/5/2023	6/5/2043	STRAWBERRY DREAM ARTWORK	LooseLeaf International LLC.	No
COP 23–00101	6/5/2023	6/5/2043	RESERVE PACKAGING DESIGN	LooseLeaf International LLC.	No
COP 23–00102	6/5/2023	6/5/2043	STRAWBERRY CRUSH	LooseLeaf International LLC.	No
COP 23–00103	6/7/2023	6/7/2043	VS Attractions (Sweet Craving, Wild One, Glam Goddess, Love Bitten)	Victoria's Secret Stores Brand Management, Inc.	No
COP 23–00104	6/12/2023	6/12/2043	HI CRUSH	Looseleaf International LLC.	No
COP 23–00105	6/12/2023	6/12/2043	Nature Whole Leaf Artwork	LooseLeaf International LLC.	No
COP 23–00106	6/12/2023	6/12/2043	Literary Works from the Archives of the Uaxashaktun Ak Pakal Muurs Nation .	Antoine Rashad Amos Bey. Address: In Care Of, Post Office Box 5146, Waco, TX, 76708.	No
COP 23–00107	6/12/2023	6/12/2043	LO-CRUSH	Looseleaf International LLC.	No
COP 23–00108	6/12/2023	6/12/2043	RUSSIAN CREAM ARTWORK	LooseLeaf International LLC.	No
COP 23–00109	6/12/2023	6/12/2043	HONEY BOURBON ARTWORK	LooseLeaf International LLC.	No
COP 23–00110	6/12/2023	6/12/2043	ICE COLD ARTWORK	LooseLeaf International LLC.	No
COP 23–00111	6/12/2023	6/12/2043	BIRTHDAY CRUSH ARTWORK	Anselm Scrubb.	No
COP 23–00112	6/13/2023	6/13/2043	Cascade Wild Bird Feeders 2022. [Group registration of published photographs. 86 photographs. 2022–10–01 to 2022–10–31]	"Ideam LLC. Address: 814 E 19th Ave, Denver, CO, 80218."	No
COP 23–00113	6/13/2023	6/13/2043	VS Fantasies Bow and Crest Design	Victoria's Secret Stores Brand Management, Inc. Address: Four Limited Parkway, Reynoldsburg, OH, 43068, United States.	No
COP 23–00114	6/16/2023	6/16/2043	VS Fantasies Bow and Crest Design (Ravishing Love, Wild Scarlet)	Victoria's Secret Stores Brand Management, Inc.	No
COP 23–00115	6/29/2023	6/29/2043	Artworks	NICOLE LEE.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 23–00116	6/29/2023	6/29/2043	MS Round Grip and 2 Other Unpublished Works.	PopSockets LLC	No
TMK 02–00932	6/28/2023	7/21/2033	CHRISTIAN DIOR (STYLIZED)	PARFUMS CHRISTIAN DIOR, S.A.	No
TMK 02–00949	6/16/2023	7/30/2032	STL (STYLIZED)	St. Louis Cardinals, LLC	No
TMK 03–00264	6/6/2023	8/4/2033	KNICKS & DESIGN	MSG HOLDINGS, L.P.	No
TMK 03–00281	6/26/2023	12/29/2032	PREMARIN	WYETH LLC	No
TMK 03–00427	6/12/2023	6/9/2033	S&W; Monogram Design	SMITH & WESSON CORP.	No
TMK 03–00708	6/27/2023	6/30/2033	DESIGN OF LIGHTER	BIC CORPORATION	No
TMK 03–00737	6/6/2023	9/1/2033	BLAZERS	TRAIL BLAZERS INC.	No
TMK 04–00039	6/23/2023	10/21/2032	ZITHROMAX	PFIZER INC.	No
TMK 04–00107	6/27/2023	9/15/2033	YOSHI	NINTENDO OF AMERICA INC.	No
TMK 04–00155	6/5/2023	9/3/2033	DORA THE EXPLORER	VIACOM INTERNATIONAL INC.	No
TMK 04–00383	5/30/2023	6/2/2033	DESIGN OF DETECTOR	GARRETT ELECTRONICS INC.	No
TMK 04–00527	6/26/2023	9/17/2033	UA (STYLIZED)	UNDER ARMOUR, INC.	No
TMK 05–00493	9/26/2014	6/2/2024	VICTORIA'S SECRET PINK	VICTORIA'S SECRET STORES BRAND MANAGEMENT, INC.	No
TMK 05–00907	6/20/2023	6/18/2033	FJ	ACUSHNET COMPANY	No
TMK 06–00454	6/29/2023	3/18/2033	PIAGET (STYLIZED)	RICHEMONT INTERNATIONAL SA	No
TMK 06–00525	6/12/2023	1/4/2026	ENDLESS LOVE	Victoria's Secret Stores Brand Management, Inc.	No
TMK 06–00596	1/13/2016	1/4/2026	LOVE SPELL	Victoria's Secret Stores Brand Management, Inc.	No
TMK 06–00655	6/13/2023	4/24/2025	COLIN STUART	VICTORIA'S SECRET STORES BRAND MANAGEMENT, LLC	No
TMK 06–00660	2/18/2016	2/8/2026	AMBER ROMANCE	VICTORIA'S SECRET STORES BRAND MANAGEMENT, INC.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 06–00715	6/14/2023	9/8/2033	PATAGONIA & DESIGN	Patagonia, Inc.	No
TMK 06–00741	6/6/2023	7/2/2033	KOOL	REYNOLDS INNOVATIONS INC.	No
TMK 07–00068	6/15/2023	3/17/2033	GE and Design	General Electric Company	No
TMK 07–00075	6/1/2023	8/20/2033	CHROME HEARTS & DESIGN	Chrome Hearts LLC	No
TMK 07–00279	6/21/2023	9/3/2033	HEELYS	BBC INTERNATIONAL LLC	No
TMK 07–01288	6/14/2023	6/18/2033	Configuration of Cylinder Bottle	Voss of Norway ASA	No
TMK 08–00567	6/16/2023	9/3/2033	DSPIC (STYLIZED)	Microchip Technology Incorporated	No
TMK 08–01178	6/1/2023	7/15/2033	CHROME HEARTS & BANNER DESIGN	CHROME HEARTS LLC	No
TMK 09–00740	6/12/2023	9/7/2033	ADRIENNE VITTADINI	ABG-SLG, LLC	No
TMK 10–00182	6/15/2023	3/15/2033	BIOTENE	GlaxoSmithKline LLC	No
TMK 10–00414	6/14/2023	6/16/2033	REGO	ENGINEERED CONTROLS INTERNATIONAL, LLC	No
TMK 12–00788	6/21/2023	9/15/2033	SUN	Oracle America, Inc.	No
TMK 12–00856	5/31/2023	3/1/2033	BVLGARI	BULGARI S.P.A.	No
TMK 12–01152	6/20/2023	9/1/2033	M&M;'S	Mars, Incorporated	No
TMK 13–00156	6/30/2023	4/29/2033	NISSAN	Nissan Jidosha Kabushiki Kaisha TA Nissan Motor Co., Ltd.	No
TMK 14–00017	6/13/2023	9/8/2033	CERTINA	Certina AG (Certina SA)(Certina LTD)	No
TMK 15–00503	12/13/2016	1/29/2027	ALAIA (STYLIZED)	AATC TRADING AG	No
TMK 15–00505	12/13/2016	12/23/2028	ALAIA	AATC TRADING AG	No
TMK 16–00041	6/27/2023	9/18/2033	DESIGN OF DOT	YOGITOES LLC	No
TMK 16–00153	2/16/2016	3/1/2026	PINK (STYLIZED)	Victoria's Secret Stores Brand Management, Inc.	No
TMK 16–00156	2/16/2016	5/24/2025	LOVE PINK	Victoria's Secret Stores Brand Management, Inc.	No
TMK 16–00218	6/22/2023	6/25/2033	SOBELLA and DESIGN	Sobel Westex Inc.	No

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TMK 16–00220	6/22/2023	6/25/2032	SOBELLA & DESIGN	Sobel Westex Inc.	No
TMK 16–00221	6/22/2023	6/25/2033	SOBELLA & DESIGN	Sobel Westex Inc.	No
TMK 16–00286	6/13/2023	9/8/2033	COLUMBIA UNIVERSITY	The Trustees of Columbia University in the City of New York	No
TMK 16–01093	6/12/2023	12/13/2026	PINK (STYLIZED)	Victoria's Secret Stores Brand Management, Inc.	No
TMK 17–00511	6/1/2023	6/11/2033	J'ADORE	PARFUMS CHRISTIAN DIOR, S.A.	No
TMK 17–00873	6/1/2023	8/21/2033	TOMMY JOHN	TOMMY JOHN, INC.	No
TMK 18–00019	6/5/2023	3/8/2033	TIFFANY (STYLIZED)	TIFFANY (NJ) LLC	No
TMK 18–00042	6/12/2023	1/9/2033	OTTER WAX	OTTER WAX LLC	No
TMK 18–00072	1/29/2018	11/1/2027	PINK (STYLIZED)	Victoria's Secret Stores Brand Management, Inc.	No
TMK 18–00074	6/15/2023	1/17/2028	Dog Silhouette Design	VICTORIA'S SECRET STORES BRAND MANAGEMENT, LLC	No
TMK 18–00075	6/6/2023	11/8/2027	PINK (Stylized)	VICTORIA'S SECRET STORES BRAND MANAGEMENT, LLC	No
TMK 18–00738	6/22/2023	6/26/2033	OIOIOI & DESIGN	Osborne Industries, Inc.	No
TMK 18–00739	6/22/2023	6/26/2033	OSBORNE INDUSTRIES	Osborne Industries, Inc.	No
TMK 18–00740	6/22/2023	6/26/2033	OSBORNE	Osborne Industries, Inc.	No
TMK 18–00763	7/31/2018	4/2/2028	PINK (STYLIZED)	Victoria's Secret Stores Brand Management, Inc.	No
TMK 18–00982	9/14/2018	4/2/2028	PINK NATION (STYLIZED)	Victoria's Secret Stores Brand Management, Inc.	No
TMK 18–00983	6/15/2023	10/24/2028	Victoria Sport (STYLIZED)	Victoria's Secret Stores Brand Management, Inc.	No
TMK 18–00984	9/18/2018	8/29/2028	VS (STYLIZED)	Victoria's Secret Stores Brand Management, Inc.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 19–00050	6/15/2023	1/23/2029	VICTORIA SPORT	Victoria's Secret Stores Brand Management, Inc.	No
TMK 19–00051	6/15/2023	9/26/2028	VICTORIA'S SECRET LOVE & HEART DESIGN	VICTORIA'S SECRET STORES BRAND MANAGEMENT, LLC	No
TMK 19–00202	6/20/2023	7/27/2033	KIRBY MORGAN	KIRBY MORGAN DIVE SYSTEMS, INC.	No
TMK 19–00543	6/21/2023	6/9/2033	PRED FORTE	ALLERGAN, INC.	No
TMK 19–00997	6/2/2023	6/15/2033	AMERICAN	AMERICAN WATER HEATER COMPANY	No
TMK 20–00290	6/6/2023	9/4/2033	TT (STYLIZED)	River Light V, L.P.	No
TMK 20–00396	6/15/2023	3/17/2033	MILLENNIUM RESPIRONICS	RIC INVESTMENTS, LLC	No
TMK 20–00457	6/7/2023	8/26/2030	PINK	Victoria's Secret Stores Brand Management, Inc.	No
TMK 20–00535	6/20/2023	9/18/2033	NATS	Washington Nationals Baseball Club, LLC	No
TMK 20–00546	6/20/2023	6/12/2033	BOGG	Twenty-Six Designs, LLC	No
TMK 20–00743	6/1/2023	5/25/2033	I-FORCE	Toyota Corporation	No
TMK 21–00042	6/16/2023	6/19/2033	CUMMINS (STYLIZED)	Cummins Inc.	No
TMK 21–00137	6/14/2023	6/25/2033	GE MONOGRAM & DESIGN	General Electric Company	No
TMK 21–00163	6/15/2023	9/20/2027	M&H;	M&H; SPIRITS LLC	No
TMK 21–00177	5/30/2023	8/28/2033	HEL-STAR 6	CORE SURVIVAL INC.	No
TMK 21–00462	6/28/2023	1/16/2033	REGENERON	Regeneron Pharmaceuticals, Inc.	No
TMK 21–00940	6/13/2023	9/11/2033	KEYSOCKS	KeySocks, LLC	No
TMK 21–01030	6/8/2023	6/19/2033	AYLA	AYLA, LLC	No
TMK 22–00708	8/30/2022	6/17/2032	HUGGIES	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 22–01056	6/30/2023	4/22/2033	GILEAD	Gilead Sciences Inc.	No
TMK 23–01755	5/30/2023	8/30/2033	BOVIET SOLAR	Boviet Solar USA, Ltd.	No
TMK 23–01756	5/30/2023	8/30/2033	ANTHONY L MARFIONE	Microtech Knives, Inc.	No

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TMK 23–01757	5/30/2023	8/30/2033	RAM-LOK	Microtech Knives, Inc.	No
TMK 23–01758	5/31/2023	11/4/2025	CD & DESIGN	Parfums Christian Dior 33 FRANCE	No
TMK 23–01759	5/31/2023	2/12/2030	JOY DIOR (STYLIZED)	Parfums Christian Dior, FRANCE	No
TMK 23–01760	6/1/2023	4/14/2030	STONE ISLAND	MONCLER S.P.A. ITALY	No
TMK 23–01761	6/1/2023	5/21/2033	LMNT	DRINK LMNT, INC.	No
TMK 23–01762	6/2/2023	6/30/2026	CD	PARFUMS CHRISTIAN DIOR, S.A. FRANCE	No
TMK 23–01763	6/5/2023	8/25/2032	HAGUE	A. O. SMITH WATER TREATMENT	No
TMK 23–01764	6/5/2023	4/19/2028	WATER RIGHT	A. O. SMITH WATER TREATMENT	No
TMK 23–01765	6/5/2023	11/5/2028	VICTORIA'S SECRET	Victoria's Secret Stores Brand Management, Inc.	No
TMK 23–01766	6/5/2023	6/7/2033	N & DESIGN	Nintendo of America Inc.	No
TMK 23–01767	6/2/2023	8/9/2031	AMD & DESIGN	Advanced Micro Devices, Inc.	No
TMK 23–01768	6/6/2023	5/23/2026	DIAMOND PATTERN DESIGN	Southern Champion Tray	No
TMK 23–01769	6/6/2023	3/14/2032	BUCHONA	Carolina Cruz	No
TMK 23–01770	6/8/2023	12/25/2027	SUPER BEE	FCA US LLC	No
TMK 23–01771	6/8/2023	7/9/2033	DRI-TAC	WINN INCORPORATED	No
TMK 23–01772	6/7/2023	3/14/2030	OPI	OPI PRODUCTS INC.	No
TMK 23–01773	6/7/2023	12/1/2030	O.P.I.	WELLA OPERATIONS US, LLC	No
TMK 23–01774	6/5/2023	8/30/2033	Y (STYLIZED)	SPIKE CABLE NETWORKS INC.	No
TMK 23–01775	6/7/2023	11/27/2033	WELLA PROFESSIONALS & DESIGN	WELLA INTERNATIONAL OPERATIONS, SWITZERLAND	No
TMK 23–01776	6/7/2023	12/22/2030	SHINEFINITY	Wella International Operations, Switzerland	No
TMK 23–01777	6/7/2023	11/18/2030	WELLA & Design	Wella International Operations, Switzerland	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01778	6/12/2023	8/18/2026	CLAIROL	WELLA OPERATIONS US, LLC	No
TMK 23–01779	6/12/2023	10/20/2029	BENETINT	BENEFIT COSMETICS, LLC	No
TMK 23–01780	6/12/2023	1/18/2029	NIOXIN	Wella International Operations SWITZERLAND	No
TMK 23–01781	6/12/2023	11/24/2029	KOLESTON PERFECT	WELLA INTERNATIONAL OPERATIONS SWITZERLAND	No
TMK 23–01782	6/12/2023	2/14/2031	WINN	WINN, Inc.	No
TMK 23–01783	6/12/2023	9/15/2024	GHD	Jemella Group, Ltd.	No
TMK 23–01784	6/12/2023	3/12/2027	B.B.SIMON	BB SIMON, INC.	No
TMK 23–01785	6/12/2023	10/17/2027	DESIGN OF BADGE	FCA US LLC	No
TMK 23–01786	6/12/2023	8/5/2029	WINN	Winn Incorporated	No
TMK 23–01787	6/12/2023	5/9/2030	GHD	Jemella Group Limited	No
TMK 23–01788	6/12/2023	6/2/2030	MADI CLAIRE	KHROMACHOU, LATIF	No
TMK 23–01789	6/12/2023	6/13/2032	BLONDOR	WELLA INTERNATIONAL OPERATIONS, SWITZERLAND	No
TMK 23–01790	6/12/2023	8/26/2025	WINN	WINN INCORPORATED	No
TMK 23–01791	6/12/2023	9/27/2027	KLIPTRIO	CONTRERAS, ALEXANDRE	No
TMK 23–01792	6/12/2023	1/3/2028	BLUE STOP MAX	Clavel Corporation	No
TMK 23–01793	6/12/2023	3/26/2027	WINN & DESIGN	WINN INCORPORATED	No
TMK 23–01794	6/12/2023	10/3/2028	GOAT GUNS	Goatguns LLC	No
TMK 23–01795	6/12/2023	5/4/2030	SCAT PACK & DESIGN	FCA US LLC	No
TMK 23–01796	6/12/2023	3/1/2031	PINK (Stylized)	VICTORIA'S SECRET STORES BRAND MANAGEMENT, LLC	No
TMK 23–01797	6/12/2023	10/13/2031	WINN & Design	Winn Incorporated	No
TMK 23–01798	6/12/2023	3/7/2032	UBER	Uber Technologies, Inc.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01799	6/12/2023	6/29/2032	PINK (Stylized)	Victoria's Secret Stores Brand Management, LLC c/o VS - Legal Services	No
TMK 23–01800	6/12/2023	8/31/2032	VS & Design	Victoria's Secret Stores Brand Management, LLC c/o VS - Legal Services, IP Team	No
TMK 23–01801	6/12/2023	3/27/2033	V Design	Victoria's Secret Stores Brand Management, LLC c/o VS - Legal Services, IP	No
TMK 23–01802	6/12/2023	8/9/2033	SLIME LICKER SQUEEZE	CANDY DYNAMICS, INC.	No
TMK 23–01803	6/12/2023	7/18/2033	DESIGN OF FIREARM CLEANING KIT	The B & F System, Inc.	No
TMK 23–01804	6/12/2023	3/13/2032	THEY'RE REAL	Benefit Cosmetics LLC	No
TMK 23–01805	6/12/2023	10/20/2029	HIGH BEAM	BENEFIT COSMETICS, LLC	No
TMK 23–01806	6/12/2023	9/28/2032	CATCUS	Alexandra Brodt Illustration	No
TMK 23–01807	6/13/2023	2/7/2027	SCHLUTER	SCHLÜTER-SYSTEMS KG GERMANY	No
TMK 23–01808	6/13/2023	6/14/2033	MD AUDIO ENGINEERING	MD Audio Engineering, Inc.	No
TMK 23–01809	6/13/2023	7/11/2030	BAD GAL	BENEFIT COSMETICS LLC	No
TMK 23–01810	6/13/2023	6/23/2031	SCHLUTER SYSTEMS & DESIGN	Schlüter-Systems KG GERMANY	No
TMK 23–01811	6/13/2023	3/24/2030	VICTORIA'S SECRET	VICTORIA'S SECRET STORES BRAND MANAGEMENT, LLC VS - Legal Services, IP Team	No
TMK 23–01812	6/13/2023	2/16/2024	L & DESIGN	Los Angeles Lakers, Inc.,	No
TMK 23–01813	6/13/2023	9/25/2026	LOS ANGELES LAKERS & Basketball Design	Los Angeles Lakers, Inc.,	No
TMK 23–01814	6/13/2023	7/25/2033	PIKMIN	Nintendo of America Inc.	No
TMK 23–01815	6/13/2023	6/21/2033	THE LEGEND OF ZELDA	Nintendo of America Inc.	No
TMK 23–01816	6/13/2023	4/26/2030	IT COSMETICS (STYLIZED)	L'OREAL USA CREATIVE, INC.	No
TMK 23–01817	6/14/2023	4/1/2029	CHARMING	NU SCENTS TRADING INC	No

CBP IPR RECORDATION — JUNE 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01818	6/14/2023	3/11/2033	IT COSMETICS (STYLIZED)	L'OREAL USA CREATIVE, INC.	No
TMK 23–01819	6/14/2023	11/4/2025	SABOTAGE	NU SCENTS TRADING INC	No
TMK 23–01820	6/14/2023	3/11/2033	IT COSMETICS	L'OREAL USA CREATIVE, INC.	No
TMK 23–01821	6/13/2023	7/4/2033	DESIGN OF MARIO	Nintendo of America Inc.	No
TMK 23–01822	6/15/2023	7/28/2025	IT (STYLIZED)	L'OREAL USA CREATIVE, INC.	No
TMK 23–01823	6/15/2023	4/19/2030	IT COSMETICS	L'OREAL USA CREATIVE, INC.	No
TMK 23–01824	6/15/2023	2/1/2027	ANGLER	Gradus Group, LLC	No
TMK 23–01825	6/15/2023	4/2/2028	PINK (Stylized)	VICTORIA'S SECRET STORES BRAND MANAGEMENT, LLC	No
TMK 23–01826	6/15/2023	3/17/2030	PINK	VICTORIA'S SECRET STORES BRAND MANAGEMENT, LLC	No
TMK 23–01827	6/15/2023	3/17/2030	PINK (Stylized)	VICTORIA'S SECRET STORES BRAND MANAGEMENT, LLC	No
TMK 23–01828	6/15/2023	6/12/2029	Dog Silhouette & Heart Design	VICTORIA'S SECRET STORES BRAND MANAGEMENT, LLC	No
TMK 23–01829	6/16/2023	9/4/2032	CHAP STICK	GLAXOSMITHKLINE CONSUMER HEALTHCARE HOLDINGS (US) LLC	No
TMK 23–01830	6/16/2023	4/16/2031	PROXEED	ALFASIGMA S.P.A. SOCIETÀ PER AZIONI (SPA)	No
TMK 23–01831	6/16/2023	3/28/2032	DON'T BE SAD	Noaha	No
TMK 23–01832	6/20/2023	7/11/2033	LOOSELEAF & DESIGN	LOOSELEAF INTERNATIONAL, LLC	No
TMK 23–01833	6/20/2023	9/29/2031	V & DESIGN	Ronin Factory, LLC	No
TMK 23–01834	6/20/2023	1/23/2029	THE HYPE BUTTON	D'Avolio, Jon	No
TMK 23–01835	6/20/2023	9/9/2025	ROLLER LASH	Benefit Cosmetics LLC	No
TMK 23–01836	6/20/2023	11/7/2027	BENEFIT	BeneFit Cosmetics LLC	No
TMK 23–01837	6/20/2023	6/20/2033	HOPSTEINER SS & DESIGN	S. S. STEINER, INC.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01838	6/21/2023	12/8/2029	HEELYS	Heeling Sports Limited Heeling Management Corp	No
TMK 23–01839	6/22/2023	1/11/2027	CAUDALIE	Tomcat International UNITED KINGDOM	No
TMK 23–01840	6/22/2023	12/1/2029	GTUL	Morando, Gregory	No
TMK 23–01841	6/22/2023	8/23/2033	IRSVP	Mogas Industries, Inc.	No
TMK 23–01842	6/23/2023	3/13/2033	MOGAS WATSON SERIES	Mogas Industries, Inc.	No
TMK 23–01843	6/23/2023	8/2/2033	NATIVE & Design	USINA SÃO FRANCISCO S.A	No
TMK 23–01844	6/27/2023	11/1/2025	NORMA KAMALI	KAMALI, NORMA	No
TMK 23–01845	6/28/2023	9/23/2030	FREEARM	Staley House LLC	No
TMK 23–01846	6/28/2023	5/4/2030	MUSZYNIANKA	SPOLDZIELNIA PRACY MUSZYNIANKA LABOR COOPERATIVE	No
TMK 23–01847	6/28/2023	4/3/2032	GIVENCHY	LVMH Fragrance Brands	No
TMK 23–01848	6/28/2023	9/27/2033	Y (STYLIZED)	SPIKE CABLE NETWORKS INC.	No
TMK 23–01849	6/30/2023	1/7/2025	DAHLIA DIVIN	LVMH FRAGRANCE BRANDS FRANCE	No
TMK 23–01850	6/30/2023	7/28/2030	TCM	MITSUBISHI LOGISNEXT CO., JAPAN	No
TMK 23–01851	6/30/2023	9/9/2030	SURRON	Chongqing Qiulong Technology Co., HINA	No
TMK 23–01852	6/30/2023	1/21/2028	TCM (STYLIZED)	MITSUBISHI LOGISNEXT CO.JAPAN	No
TMK 23–01853	6/30/2023	9/18/2033	UNICARRIERS	MITSUBISHI LOGISNEXT CO. JAPAN	No
TMK 23–01854	6/30/2023	6/3/2030	IRRESISTIBLE	LVMH FRAGRANCE BRANDS FRANCE	No
TMK 23–01855	6/28/2023	6/24/2030	MOGAS	Mogas Industries, Inc.	No
TMK 23–01856	6/29/2023	3/1/2033	CMY CUBES	ORBITAL STRUCTURES AUSTRALIA	No
TMK 23–01857	6/29/2023	9/6/2033	CMY CUBES & DESIGN	ORBITAL STRUCTURES AUSTRALIA	No
TMK 23–01858	6/30/2023	3/22/2026	GIVENCHY LIVE IRRESISTIBLE	LVMH FRAGRANCE BRANDS FRANCE	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01859	6/30/2023	6/27/2028	L'INTERDIT	LVMH FRAGRANCE BRANDS FRANCE	No
TMK 96–00757	1/21/2016	11/1/2025	VICTORIA'S SECRET	VICTORIA'S SECRET STORES BRAND MANAGEMENT, INC.	No

U.S. Court of International Trade

Slip Op. 23–107

BROOKLYN BEDDING, LLC, et al., Plaintiffs, v. UNITED STATES, Defendant, and SAFFRON LIVING CO., LTD., Defendant-Intervenor.

Court No. 21–00285
Before: M. Miller Baker, Judge

[Granting Plaintiffs' motion for judgment on the agency record.]

Dated: July 20, 2023

Chase J. Dunn, Cassidy Levy Kent (USA) LLP of Washington, DC, argued for Plaintiffs. With him on the briefs was *Yohai Baisburd*.

Kara M. Westercamp, Trial Attorney, Commercial Litigation Branch, U.S. Department of Justice of Washington, DC, argued for Defendant. With her on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General; *Patricia M. McCarthy*, Director; and *L. Misha Preheim*, Assistant Director. Of counsel on the brief was *Savannah Maxwell*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce of Washington, DC.

Eric Emerson, Steptoe & Johnson LLP of Washington, DC, argued for Defendant-Intervenor. With him on the brief was *Hui Cao*.

OPINION

***Baker*, Judge:**

In this lawsuit, domestic mattress producers and labor unions representing workers in that industry challenge certain aspects of the Department of Commerce's application of antidumping duties to a Thai mattress importer. Seeking heftier duties, they contend that Commerce failed to comply with its statutory obligations and deviated from its longstanding practice without explanation. Finding their arguments persuasive, the court remands for further administrative proceedings.

I

This case arises out of an antidumping investigation involving mattresses imported from Thailand. *See Mattresses from Thailand: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 Fed. Reg. 15,928 (Dep't Commerce Mar. 25, 2021), and accompanying Issues & Decision Memorandum (Mar. 18, 2021), Appx1459–1475.

In its investigation, Commerce selected two mandatory respondents, one of which was Saffron Living Co., Ltd., a Thai mattress producer and importer of record. In response to Commerce's various questionnaires, the company reported that it "purchases parts of

certain raw materials" from two affiliated companies. Appx2752. Saffron further admitted that in making the relevant entries it misrepresented to U.S. Customs and Border Protection both the identity of the producer and the country of origin of some of its imports. Appx1472, Appx1013.

Commerce preliminarily found that Saffron's false statements to Customs warranted application of total facts otherwise available with an adverse inference, commonly referred to as "total adverse facts available" or "total AFA." Appx1006–1008.[1] The Department applied, in essence, the rule of *falsus in uno, falsus in omnibus* and concluded that the company's dishonesty with Customs "call[ed] into question the validity and credibility of all Saffron's submitted information." Appx1015. The result was the highest possible dumping margin of 763.28 percent. Appx1016.

Because it applied total AFA, Commerce declined to verify Saffron's information. *See Mattresses from Thailand: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 Fed. Reg. 69,568, 69,570 (Dep't Commerce Nov. 3, 2020). The Department then received a new round of briefing before making a final determination. *Id.*

In that briefing, Saffron argued that it had come clean with Commerce about its lies to Customs and that those lies only pertained to "a trivial share of [its] total sales to the United States" during the relevant time. Appx6560. The company urged the Department to assign a dumping margin based on its own data instead of one based on total AFA, and to conduct verification "to the extent that the Department has any concerns about the accuracy of Saffron's reported data." Appx6564–6565.

That argument evidently gained traction, as Commerce's final determination applied partial, rather than total, AFA. The Department explained that even though the company had "engaged in a scheme to misrepresent the true producers of certain mattresses to avoid payment of cash deposits," Appx1472–1473,

> (1) Saffron was forthright in its questionnaire and supplemental questionnaire responses in disclosing the fact that a scheme was in place to misrepresent the true producer of the subject merchandise sold to the United States during the [period of investigation]; and (2) record evidence indicates that the total quantity of the certain mattresses sold by Saffron pursuant to that

[1] For background on adverse facts available, *see Hung Vuong Corp. v. United States*, 483 F. Supp. 3d 1321, 1336–39 (CIT 2020).

> scheme as a percentage of total U.S. sales during the [period of investigation] does not compromise or undermine the remainder of Saffron's U.S. sales and cost databases.[2]

Appx1473. *Cf. Dalian Meisen Woodworking Co. v. United States*, 571 F. Supp. 3d 1364, 1377 (CIT 2021) (faulting the Department for applying total AFA after an importer fully admitted to Commerce that the company falsely advertised to U.S. customers). Therefore, the Department calculated a margin for Saffron's Thai-manufactured mattresses using the company's data, assigned the highest margin of 763.28 percent only "to the sales of mattresses affected by Saffron's evasion scheme," and calculated a weighting factor for each based on what portion of sales each category represented. Appx1474. Weight-averaging the two margins yielded a much lower overall dumping margin of 37.48 percent. Appx1057.

In relying on the company's information for its final determination, however, Commerce did not undertake any form of verification. The Department explained that "[b]ecause Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation, . . . we have relied upon the information submitted on the record as facts available in making our final determination." *Mattresses from Thailand: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 Fed. Reg. 15,928, 15,929 (Dep't Commerce Mar. 25, 2021) (citing 19 U.S.C. § 1677e(a)(2)(D)).[3]

After Commerce issued its final determination, the domestic industry petitioners filed a ministerial-error allegation under 19 U.S.C. § 1673d(e) and 19 C.F.R. § 351.224(f). Appx6582–6594. They argued that because Saffron reported that "it purchases part of certain raw materials (for example, mattress covers, fabric, and other materials used in the production of mattresses) from two affiliated companies," Commerce had to consider that those purchases might not be arm's-

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[2] In a separate memorandum, Commerce cited specific data showing (1) Saffron's overall mattress sales to the United States during the period of investigation, (2) how many third-party mattresses the company sold to the United States during that period, and (3) the tiny percentage of overall sales the latter category represented. Appx1490.

[3] In some cases, including when Commerce cannot verify information submitted by an interested party, *see* 19 U.S.C. § 1677e(a)(2)(D), the statute requires the Department to "use the facts otherwise available in reaching the applicable determination under this subtitle." *Id*. § 1677e(a)(2).

length transactions. Appx6587.[4] They contended that the Department should apply the "transactions disregarded rule" to set aside the reported prices and then use the "major input rule" to calculate replacement values. Appx6588.

Adopting arguments advanced by Saffron, *see* Appx6604–6606, Commerce rejected the petitioners' ministerial-error allegation on procedural grounds rather than the merits. The Department explained that the issues raised by petitioners were not properly characterized as mere ministerial errors under 19 U.S.C. § 1673d(e) and 19 C.F.R. § 351.224(f) because it was a methodological choice not to make any adjustments for affiliated-party transactions. Appx1516–1517.

II

Dissatisfied with Commerce's final determination, several domestic producers and labor unions that were petitioners in the administrative proceedings timely brought this suit under 19 U.S.C. § 1516a(a)(2)(A)(i)(II) and (B)(i). ECF 14. The court has subject-matter jurisdiction over such actions under 28 U.S.C. § 1581(c).

Saffron intervened as of right on the side of the government. ECF 24. Plaintiffs then moved for judgment on the agency record. ECF 33 (confidential); ECF 34 (public). The government, ECF 37 (public); ECF 38 (confidential), and Saffron, ECF 39 (confidential); ECF 40 (public), opposed. Plaintiffs replied. ECF 41 (confidential); ECF 42 (public). The court heard oral argument.

In actions such as this brought under 19 U.S.C. § 1516a(a)(2), "[t]he court shall hold unlawful any determination, finding, or conclusion found . . . to be unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). That is, the question is not whether the court would have reached the same decision on the same record—rather, it is whether the administrative record as a whole permits Commerce's conclusion.

> Substantial evidence has been defined as more than a mere scintilla, as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. To determine if substantial evidence exists, we review the record as a whole,

[4] The concern over whether transactions between affiliated entities reflect arm's-length pricing stems from the reality that a "business enterprise can shift costs and revenue between the related entities" to lower tax and analogous liabilities such as antidumping duties. *Altera Corp. & Subsidiaries v. Comm'r of Internal Revenue*, 926 F.3d 1061, 1067 (9th Cir. 2019). This potential incentive for manipulating costs and revenue "is generally not present when similar transactions occur between unrelated business entities. In those instances, each separate unrelated entity has the incentive to maximize profit, and thus to allocate costs and income consistent with economic realities." *Id*. at 1068. An arm's-length price reflects one to which two unrelated entities would have agreed.

> including evidence that supports as well as evidence that fairly detracts from the substantiality of the evidence.

Nippon Steel Corp. v. United States, 337 F.3d 1373, 1379 (Fed. Cir. 2003) (cleaned up).

In addition, Commerce's exercise of discretion in § 1516a(a)(2) cases is subject to the default standard of the Administrative Procedure Act, which authorizes a reviewing court to "set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); *see Solar World Americas, Inc. v. United States*, 962 F.3d 1351, 1359 n.2 (Fed. Cir. 2020) (explaining that in § 1516a cases brought under section 516A of the Tariff Act of 1930, APA "section 706 review applies since no law provides otherwise") (citing 28 U.S.C. § 2640(b)). "[I]t is well-established that an agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently." *See SKF USA Inc. v. United States*, 293 F.3d 1369, 1382 (Fed. Cir. 2001) (cleaned up).

III

Plaintiffs raise three challenges to Commerce's final determination. First, they argue that the Department violated 19 U.S.C. § 1677m(i)(1) and a related regulation in failing to verify the portion of Saffron's data on which Commerce ultimately chose to rely. Second, they contend that the Department's failure to follow a longstanding practice of applying the transactions disregarded and major input rules in evaluating affiliate-party transactions renders its decision arbitrary and capricious. Third, they similarly assert that Commerce failed to follow its longstanding practice of publishing a post-preliminary determination and providing the parties an opportunity to comment on any changes which might take place before the final determination.

A

"A critical aspect of Commerce's antidumping investigation involves 'verification' of mandatory respondents." *New Am. Keg v. United States*, Ct. No. 20–00008, Slip Op. 21–30, at 6, 2021 WL 1206153, at *2 (CIT Mar. 23, 2021). In arguing that the Department acted contrary to law in failing to conduct verification, Plaintiffs focus on the statutory text, which is unambiguous and provides that Commerce "*shall verify* all information relied upon in making . . . a final determination in an investigation." 19 U.S.C. § 1677m(i)(1) (emphasis added). The Department's implementing regulations likewise provide

that Commerce "*will verify* factual information upon which the Secretary relies" in making a final determination in, among other matters, an "antidumping investigation." 19 C.F.R. § 351.307(b)(1)(i) (emphasis added).[5]

Plaintiffs contend that by changing from total AFA to partial AFA, under which Commerce relies on *some* information submitted by an interested party, the Department concomitantly obligated itself to verify that information. *See Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F.3d 1333, 1338 (Fed. Cir. 2011) ("Commerce is . . . required to verify all information relied upon in making its final determination.") (cleaned up); *cf. Smith Corona Corp. v. United States*, 771 F. Supp. 389, 399 (CIT 1991) ("Verification tests the facts upon which conclusions are to be drawn and indicates whether they will reflect an acceptable degree of certainty," and therefore Commerce has "a statutory obligation to properly verify those facts which it finds dispositive.").

In response to these inexorable statutory and regulatory commands, the government contends that the Department was "unable to conduct" verification, "or even issue 'in lieu of verification' questionnaires[,] once it determined that only partial AFA should apply to certain mattresses." ECF 37, at 30 (citing Appx1472 n.62). But Commerce did not say it was "unable to conduct" *any* form of verification—rather, it stated that it could not perform *on-site* verification,[6] 86 Fed. Reg. at 15,929, because the preliminary determination had used total AFA. Appx1472 n.62.[7] The government's "unable" argument is therefore post hoc rationalization. *Cf. SKF USA Inc. v. United States*, 254 F.3d 1022, 1028 (Fed. Cir. 2001) ("[C]ourts may not accept appellate counsel's *post hoc* rationalizations for agency action.") (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

Echoing the final determination's reasoning, *see* 86 Fed. Reg. at 15,929, the government further argues that because the Department was unable to verify Saffron's information, Commerce could nevertheless use that information as "facts otherwise available" under 19

[5] The regulations ordinarily require the Department to conduct on-site verification and direct personnel making such visits to "request access to all files, records, and personnel which the Secretary considers relevant to factual information submitted." *Id.* § 351.307(d)(1)–(3); *see also Teknik Aluminyum Sanayi A.S. v. United States*, Ct. No. 21–00251, Slip Op. 23–33, at 4, 2023 WL 2533457, at *1 (CIT Mar. 16, 2023) (discussing § 351.307(d) and noting that Commerce conducted verification via questionnaire when COVID-19 made on-site verification impracticable).

[6] *Cf. Bonney Forge Corp. v. United States*, 560 F. Supp. 3d 1303, 1313–14 (CIT 2022) (recognizing that even if on-site verification is not an option, Commerce has an obligation to consider using some form of virtual verification).

[7] The government's assertion that Commerce could not "even issue 'in lieu of verification' questionnaires" is cut from whole cloth. ECF 37, at 30. Commerce said no such thing.

U.S.C. § 1677e(a)(2)(D). *See* ECF 37, at 31–32. But that reading would eviscerate the separate requirement that Commerce "*shall* verify all information relied upon in making . . . a final determination in an investigation." 19 U.S.C. § 1677m(i)(1) (emphasis added). The court therefore rejects the government's argument because it would violate the harmonious-reading canon—the principle that "[t]he provisions of a text should be interpreted in a way that renders them compatible, not contradictory." Antonin Scalia and Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 180 (2012).

Commerce's reliance on Saffron's unverified data was contrary to law. On remand, insofar as the Department continues to rely upon that data, it must undertake verification.

B

Plaintiffs argue, and neither the government nor Saffron disputes, that "Commerce's practice of applying both the transactions disregarded and major input rules, as appropriate, in antidumping duty investigations is well established." ECF 34, at 24 (citing several Commerce determinations acknowledging this practice); *see also* 19 U.S.C. §§ 1677b(f)(2) (transactions disregarded rule), (f)(3) (major input rule).

Plaintiffs further point out, again without dispute, that Commerce applied the transactions disregarded and/or major input rules in its companion investigations of Cambodian, Indonesian, and Serbian mattress imports. *Id.* at 21 (citing Commerce determinations in those investigations). They contend, and again neither the government nor the defendant-intervenor disputes, that in its final determination stemming from the investigation of Thai mattress imports, the Department "ignored record evidence of Saffron's substantial affiliated[-]party transactions . . . when calculating a final dumping margin and refused to apply either the transactions disregarded or major input rules." *Id*. at 26.

The government's response to all of this is anemic—the best the government can muster is that "there is no [statutory] requirement that Commerce apply either rule." ECF 37, at 36 (emphasis removed). Saffron makes the same point, *see* ECF 40, at 20–21, along with the post hoc rationalization that it "demonstrated that adjustments under these provisions would not be warranted," *id*. at 21.[8]

[8] In this court, neither the government nor Saffron contends that Plaintiffs' ministerial-error challenge to the Department's failure to apply the transactions disregarded and/or major input rules was procedurally improper. As noted above, at Saffron's urging Commerce rejected Plaintiffs' challenge on that ground. *See* Appx1516–1517. Because the government and Saffron have abandoned their procedural objection, the court assumes that Plaintiffs properly raised their transactions disregarded/major input argument before the Department.

Although Commerce was not required to apply either rule, what it could not do is depart from its undisputed practice of applying one or both rules to affiliated-party transactions without at least explaining why it was so deviating from settled practice. "When an agency decides to change course . . . it must adequately explain the reason for a reversal of policy." *Nippon Steel Corp. v. U.S. Int'l Trade Comm'n*, 494 F.3d 1371, 1377 n.5 (Fed. Cir. 2007). Where, as here, "the agency's discretion is unfettered at the outset, if it announces and follows—by rule or by settled course of adjudication—a general policy by which its exercise of discretion will be governed, an irrational departure from that policy (as opposed to an avowed alteration of it) could constitute action that must be overturned as arbitrary, capricious, or an abuse of discretion." *INS v. Yang*, 519 U.S. 26, 32 (1996) (cleaned up). Commerce's failure to explain why it did not follow its longstanding practice of applying the transactions disregarded and/or major input rules was arbitrary, capricious, and an abuse of discretion. The court will remand for the Department to explain that failure or to apply either or both of those rules.

C

Finally, Plaintiffs contend that by changing course in its final determination without issuing a post-preliminary determination, Commerce denied them the opportunity to comment on its failure to verify Saffron's information and to evaluate affiliated-party transactions in accord with longstanding practice. The court's remand renders it unnecessary to address this issue.

* * *

For the foregoing reasons, the court **GRANTS** judgment on the agency record for Plaintiffs. A separate remand order will issue.

Dated: July 20, 2023
New York, NY

/s/ M. Miller Baker
JUDGE

Slip Op. 23–108

NORCA ENGINEERED PRODUCTS, LLC, Plaintiff v. UNITED STATES, Defendant

Before: Jane A. Restani, Judge
Court No. 21–00305

[In a Customs classification matter, Plaintiff's motion for summary judgment is granted in part and denied in part, and Defendant's motion for summary judgment is granted.]

Dated: July 21, 2023

Christopher Clark, Squire Patton Boggs (US) LLP of Washington, DC, argued for Plaintiff, Norca Engineered Products, LLC. With him on the brief was *Jeremy W. Dutra*.

Edward F. Kenny, Senior Trial Counsel, U.S. Department of Justice, International Trade Field Office, argued for the Defendant, the United States of America. With him on the brief were *Brian M. Boyton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, *Justin R. Miller*, Attorney-In-Charge, and *Aimee Lee*, Assistant Director, U.S. Department of Justice, International Trade Field Office. Of counsel on the brief was *Mathias Rabinovitch*, Assistant Chief Counsel, International Trade Litigation, U.S. Customs and Border Protection.

OPINION

Restani, Judge:

Before the court are cross motions for summary judgment. Pl. Mot. for Summ. J., ECF Nos. 19–20 (Nov. 3, 2022) ("Pl. Br."); Def. Mem. in Supp. of Cross-Mot. for Summ. J. and Opp'n to Pl.'s Mot. for Summ. J. Submission Materials, ECF No. 23 (Jan. 23, 2023) ("Def. Materials"). Plaintiff Norca Engineered Products ("Norca") challenges the United States Customs and Border Protection's ("Customs") classification of cast iron counterweights for self-propelled mini or compact excavators under subheading 8431.49.9044 of the Harmonized Tariff Schedule of the United States ("HTSUS"). At issue is whether the machine of which the counterweights are a part should be classified as an "excavator: other" or as a "backhoe" for tariff purposes. *See* Pl. Br. at 1. The outcome determines whether all subject merchandise is properly classified under 9903.88.14, HTSUS, thus qualifying the merchandise for an exclusion via *Notes of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*,[1] under the Section 301 provisions of the Trade Act of 1974, 19 U.S.C. § 2411. Pl. Br. at 1; 19 U.S.C. § 2411. Originally at issue in this matter also was whether the counter-

[1] 85 Fed. Reg. 9921 (Feb. 20, 2020).

weights weighing between 400 kg and 600 kg, even if determined to be parts of backhoes, qualify for an exclusion under 85 Fed. Reg. 9921. Pl. Br. at 1; *Notes of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 85 Fed. Reg. 9921 (Office of the United States Trade Representative ("USTR") Feb. 2, 2020). The parties agree that the exclusion applies, and the court will not discuss it further.

I. Background

A. Procedural History

The subject merchandise at issue entered the United States in the ports of Seattle and Chicago in 2018 and 2019. *See* Pl. Statement of Material Facts ¶ 17, ECF. Nos. 19–1, 20–1 (Nov. 3, 2022) ("Pl. Facts") ¶ 43; Conf. Ex. in Supp. of Pl. Br., ECF No. 19–2, (Nov. 2, 2022) ("Pl. Conf.") Ex. 2; Pl. Conf. Ex. 3; Pl. Conf. Ex. 11. Upon entry it was classified under 8709.90.00, HTSUS as parts of certain self-propelled work trucks. *See* Pl. Conf. Ex. 4 at 95, 127, 159, 198, 236, 270, 280, 336, 374. Norca protested this classification, arguing that the proper classification for the merchandise was 8431.49.9095, HTSUS. *See* Pl. Conf. Ex. 4 at 95, 127, 159, 198, 236, 270, 280, 336, 374. In a Notice of Action relating to the protest, Customs stated that the merchandise should have been classified under 8431.49.90, HTSUS, reasoning that "the mini-excavators [on which] the counterweights are installed [] seem to be of the type provided for under HTS 8429," referenced in heading 8431. Pl. Conf. Ex. 2 at 21. On June 4, 2019, the Customs import specialist determined that the appropriate HTSUS classification for the merchandise was 8431.49.9044, relying on Customs Ruling NY K83392, and holding that 8431.49.9040 covers certain parts of the self-propelled mini excavator at issue there. *Id.* at 19.

Between December 11, 2019, and December 22, 2020, Norca timely submitted fifteen protests. *See* Pl. Conf. Ex. 2, 3; Pl. Facts ¶ 17; Def. Materials at 51. In the protests, Norca continued to assert its position that the proper classification for the counterweights was 8431.49.9095, HTSUS. *See* Pl. Conf. Ex. 2, 3; Pl. Facts ¶ 18; Def. Materials at 51. Customs denied these protests, ruling that the appropriate heading was 8431.49.9044, again relying on ruling NY K83392 as well as previously issued rulings NY K82122, NY J87356, NY E81922. Pl. Conf. Ex. 4 at 425–430. None of these previous rulings addressed counterweight parts. *Id.* After receiving the denials, Norca filed a complaint challenging the Customs classification. *See* Compl., ECF No. 7 (Sept. 23, 2021). Norca later moved for summary judgment. *See* Pl. Br. Customs filed a cross motion for summary judgment. *See* Def. Materials.

B. Description of Subject Merchandise

The subject merchandise is grey, cast-iron counterweights of various weights imported from China. Pl. Facts ¶ 1; Def. Materials at 47. The counterweights are installed on different models of the Doosan Bobcat mini or compact excavators. Pl. Facts ¶ 2; Def. Materials at 47. The counterweights attach to the lower aft portion of the machine to provide balance and prevent the excavator from tipping over. Pl. Facts ¶ 4; Def. Materials at 48. There are twenty-five counterweights at issue, part numbers 7171788, 7172448, 7172453, 7183302, 7222067, 7222068, 7228249, 7240291, 7251831, 7251832, 7251833, 7284786, 7286644, 7302559, 7307032, 7330614, 7331809, 7331812, 7331815, 7343686, 7353363, 7354316, 7357073, 7415671, 7415674. Pl. Facts ¶ 5; Def. Materials at 48.

II. Jurisdiction and Standard of Review

The court has jurisdiction pursuant to Section 201 of the Customs Courts Act of 1980, 28 U.S.C. § 1581(a). The court decides classification *de novo*. *Continental Automotive Systems, Inc., v. United States*, 46 CIT __, __ 589 F. Supp. 3d 1215, 1220 (2022); *see also* 28 U.S.C. § 2640(a)(1); *Telebrands Corp. v. United States*, 36 CIT 1231, 1234, 865 F. Supp. 2d 1277, 1279– 80 (2012).

The court will grant summary judgment if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." USCIT R. 56(a). Summary judgment is appropriate in tariff classification cases where "there is no genuine dispute as to the nature of the merchandise and the classification turns on the proper meaning and scope of the relevant tariff provisions." *Deckers Outdoor Corp. v. United States*, 714 F.3d 1363, 1371 (Fed. Cir. 2013).

III. Discussion

A. Legal Framework

In a tariff classification dispute, "the court first considers whether 'the government's classification is correct, both independently and in comparison with the importer's alternative.'" *Shamrock Building Materials, Inc., v. United States*, 47 CIT __, __, 619 F. Supp. 3d 1337, 1342 (2023) (quoting *Jarvis Clark Co. v. United States*, 733 F.2d 873, 878 (Fed. Cir. 1984)). The plaintiff has the burden of demonstrating that the government's classification is incorrect. *Jarvis Clark*, 733 F.2d at 876. Independent of the arguments presented, the court has a statutory mandate to "reach a correct result." *Id.* at 878; *see* 28 U.S.C. § 2643(b).

The court determines the meaning of the tariff term as a matter of law and whether the subject merchandise is properly defined by that term as a question of fact. *Wilton Industries, Inc. v. United States*, 741 F.3d 1263, 1266 (Fed. Cir. 2013). Here the issue is a legal one. The General Rules of Interpretation ("GRIs") and, if applicable, the Additional U.S. Rules of Interpretation, guide classification decisions under the HTSUS. *Id.* GRIs are to be considered in numerical order, and "GRI 1 is paramount." *Telebrands*, 36 CIT at 1235, F. Supp. 2d at 1280.

B. Competing Tariff Provisions

Customs classified the counterweights under subheading 8431.49.9044, HTSUS. The relevant portions of Chapter 84 of the HTSUS read:

Heading 8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430:
	Of machinery of heading 8426, 8429 or 8430:
8431.49	Other
8431.49.90	Other:
	Other
8431.49.9044	Other:
	Parts of backhoes, shovels, clamshells and draglines:
	Other:
	Other

Norca contends that the counterweights should enter under subheading 8431.49.9095. The relevant portions read:

Heading 8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430:
	Of machinery of heading 8426, 8429 or 8430:
8431.49	Other
8431.49.90	Other:
	Other
8431.49.9095	Other:
	Other:
	Other:
	Other

As shown, both classifications heavily rely on what the subject merchandise is not classified as, rather than what it is. In fact, the only disputed issue for the court is whether the equipment of which the counterweights are parts are backhoes in the meaning of the HTSUS or not. Further, while the last two digits at the ten-digit level for parts

are not part of the legal text, it is the eight-digit legal text relating to the finished machinery that is determinative here. It will control which ten-digit classification for the counterweights applies.[2]

C. Tariff Classification of Cast Iron Counterweights

Even though the government and Norca agree on the first eight digits of the HTSUS for parts, the court must determine whether the classification is correct through the ten-digit level as that controls whether section 301 duties are imposed. Pl. Br. at 6; Def. Materials at 11.

The court starts with GRI 1. The subject merchandise consists of cast-iron counterweights which are parts of machines. Here, as indicated, the classification of the machine is key to determining the proper classification of the part, as part classification headings define themselves according to the machine or other finished product for which they are used. Both parties agree that the subject merchandise consists of parts of self-propelled machines, each of which has a boom, arm, digging bucket, grader blade, and tracked crawler base upon which the superstructure rotates in a 360° arc. Def. Materials at 23; Pl. Pub. Ex. 4 at 2–4. This machine is best described under the heading of "self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers: Mechanical shovels, excavators, and shovel loaders."[3]

Following the numerical ordering of the GRIs, the next relevant GRI is GRI 6: "[f]or legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes, and mutatis mutandis, to the above rules, on the understanding that only subheadings at the same level are comparable." The relevant subheading of "Machinery with a 360° revolving superstructure" applies to the machine. Therefore, the heading and six-digit subheading for the machine in question is 8429.52, HTSUS. No party disputes this.

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[2] The statistical suffix, the last two numbers in a ten-digit HTSUS code, are not a part of the legal text of the HTSUS and are not included in the legislative history of the HTSUS. *Pillowtext Corp. v. United States*, 171 F.3d 1370, 1374 (Fed. Cir. 1999) (citing *Pima Western, Inc. v. United States*, 20 CIT 110, 116, 915 F. Supp. 399, 404 (1996)).

[3] No one has argued and it would not be convincing that the "grader blade," also known as a mini dozer blade, located at the crawler or wheel level of the machine is a loading or digging device. The blade appears to be auxiliary, not a main purpose of the machine. Multipurpose analysis does not apply.

1. The Common Meaning and the HTSUS Show that the Machine is a Backhoe

The question here turns on the eight-digit subheading for the machine. Is the machine able to be classified as "[b]ackhoes, shovels, clamshells and draglines," 8429.52.10, HTSUS or as "other" than these, 8429.52.50, HTSUS? Customs argues that the machine is a backhoe and should be classified as such, within the 8429.52.10, HTSUS provision. Def. Materials at 27. Norca argues that the machine is not a backhoe, but instead a mini excavator, and should be classified within the "other" 8429.52.50, HTSUS provision. Pl. Br. at 7.

Customs contends that the machine in question is a backhoe and provides dictionary definitions to support its claim.[4] Def. Materials at 27. The court may rely upon lexicographic authorities. *See Chemtall Inc. v. United States*, 40 CIT __, __, 179 F. Supp. 3d 1200, 1203 (2016). Customs relies on two definitions, both of which provide in general terms that a backhoe is a mechanized excavator that has a bucket and an extending arm that performs its task by drawing the bucket towards the power unit. *See Backhoe*, *Webster's New World Dictionary* (3d College ed. 1988) ("*Webster's*"); *Backhoe*, *The Collins English Dictionary—Complete and Unabridged* (12th ed. 2014) ("*Collins English*"); Def. Materials at 27. *Webster's* specifies that the backhoe has an "extending arm" while *Collins English* refers to a "long jointed arm." Backhoe, *Webster's*; Backhoe *Collins English.*

Norca contends that the commercial understandings of "mini excavator" and "backhoe" are distinct and that the subject merchandise is part of a mini excavator and not of a backhoe.[5] Pl. Br. at 7. Norca points to marketing materials from construction machine manufacturers John Deere, Caterpillar, and CASE Construction Equipment,

[4] Customs also argues that Norca admitted that the machine was a backhoe in the lead protest, No. 3901–19–104467. Def. Materials at 15. In this protest, Norca noted that the machines that the counterweights were affixed to "are classified [by Doosan] under the heading 8329.52.1010, HTSUS". Pl. Conf. Ex. 2 at 15. This classification does specify that the machine is a backhoe. The rest of the protest, however, specifies that the machine is not a backhoe. "Mini excavators. . . are not interchangeable with, nor properly categorized as, backhoes, shovels, clamshells, or draglines." Pl. Conf. Ex. 2 at 16. Doosan's classification does not estop Norca. Regardless, the court decides the classification *de novo*. *Shamrock*, 619 F. Supp. 3d at 878.

[5] Norca also argues that Customs' ruling is inconsistent with a previous ruling regarding rubber tracks for excavators and violates 19 U.S.C. § 1625(c)(2), which provides limitations on modification or revocation of rulings. Pl. Br. 8–9. This is not convincing. 19 U.S.C. § 1625(c)(2) refers only to "substantially identical transactions." 19 U.S.C. § 1625(c)(2) (2022). A counterweight is different from the vulcanized rubber tracks at issue in the previous ruling. Pl. Br. at 8; Def. Materials at 39. The court has also found that prior interpretive rulings are not governed by § 1625(c)(2). *Motorola, Inc. v. United States*, 30 CIT 1766, 1781, 462 F. Supp. 2d 1367, 1381 (2006).

as well as rental company United Rentals. *Id.* Each website separates "backhoes" from "excavators," and "mini excavators" are marketed as a type of excavator, rather than a type of backhoe. *Id.*

"HTSUS terms are construed according to their common and commercial meanings which are presumed to be the same absent contrary legislative intent." *Len-Ron Mfg. Co.*, 334 F.3d 1304, 1309 (Fed. Cir. 2003); *see also Chemtall*, 179 F. Supp. 3d at 1203. A commercial meaning can overcome a common usage for classification in the HTSUS if the party arguing for commercial use shows that this use is general, definite, and uniform. *See Timber Products Co. v. United States*, 30 CIT 1632, 1643; 462 F. Supp. 2d 1342, 1351 (2006) ("In order to show that a commercial designation differs from a term's common meaning, the party invoking the commercial designation must show that the commercial use is "general (extending over the entire country), definite (certain of understanding) and uniform (the same everywhere in the country)") (citing *S.G.B. Steel Scaffolding & Shoring Co. v. United States*, 82 Cust. Ct. 197, 206 (1979)). A commercial meaning, however, prevails over a common meaning only if it is not "contrary to Congressional intent," that is, if the commercial meaning is consistent with the HTSUS. *Witex, U.S.A., Inc., v. United States*, 28 CIT 1907, 1913, 353 F. Supp. 2d 1310, 1317 (2004) (citing *Maddock v. Magone*, 152 U.S. 368, 371 (1894)). The machine at issue has an articulated arm that digs towards the vehicle, which is the dictionary definition of a backhoe. *See Backhoe*, *Webster's*; *Backhoe*, *Collins English* ; Pl. Pub. Ex. 4 at 12. Even accepting Norca's contention that backhoes are understood by the relevant industry as machines that do not have a 360° rotation and may have a significant front-end loader or "scooper," Norca cannot overcome legislative intent. *Witex*, 28 CIT at 1913, 353 F. Supp. 2d at 1317; Oral Argument at 02:30; *see also* Pl. Pub. Ex. 16 at 77.

At oral argument, Customs emphasized that the machine that Norca describes as meeting the "commercial" definition of backhoes is classified under a different category of the HTSUS than the one appropriate for the Doosan machine. *See* Oral Argument at 24:19; *see also* Pl. Pub. Ex. 16. According to Customs, the commercially understood backhoes, per Norca, are classified under 8429.59.10, as they are "mechanical shovels, excavators, and shovel loaders" that do not have a 360° rotation. Oral Argument at 24:19. Thus, the HTSUS provides that backhoes possibly, but not necessarily, have a 360° rotation, which would necessarily mean that a backhoe for HTSUS purposes does not have the narrow definition that Norca contends. The HTSUS bears this out. HTSUS 8429.51 provides for mechanical shovels, excavators, and shovel loaders but of the front-loading type.

HTSUS 8429.52 in turn covers the same basic machines (which broadly includes excavators) but segregates the non-front-loading machines into those with and without a 360° revolving superstructure. The broad provision for mechanical shovels, excavators and shovel loaders under 8429.52 is further broken down under 8429.52.10, HTSUS ("backhoes, shovels, clamshells and draglines"). Of those, only backhoes are a possible fit for the machine at issue.[6] Thus, excavator is a broad term that includes backhoes. Therefore, Norca's view of backhoes as a narrow subtype of excavators that excludes mini excavators is at odds with the structure of the HTSUS. The court cannot accept a commercial meaning that is at odds with the HTSUS itself, especially when the common meaning reflects the statute.

The structure of the HTSUS is consistent with the common meaning found in the dictionaries Customs provides. As previously stated, the machine at issue has an articulated arm that digs towards the vehicle, which is the dictionary definition of a backhoe. *See Backhoes*, *Webster's*; *Backhoes*, *Collins English*; Pl. Pub. Ex. 4 at 12. Thus, the machine in question is classified in the HTSUS as a self-propelled excavator with a 360° revolving superstructure, specifically, a backhoe. The proper classification for the machine of which the counterweights are a part is 8429.52.1010, HTSUS.

2. The Counterweight is Properly Categorized as 8431.49.9044

There is little to dispute once the machine of which the subject merchandise is a part is defined. The analysis for the counterweight part starts at GRI 1. As this is a part of merchandise that has a heading of 8429, the best heading for the counterweights would be "Parts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8426, 8429, or 8430," or 8431.[7]

Heading 8431 has several possible subheadings to consider. The next subheading descriptions available are "[b]uckets, shovels, grabs, or grips," "[b]ulldozer or angledozer blades," "parts for boring or sinking machinery of subheading 8430.41 or 9430.49," and "other." As

[6] The parties have not given sufficient information to exclude the machine from being categorized as a shovel. The machine, however, meets the common dictionary definition for backhoe and this is sufficient for the court. In any case, the outcome would not change the parts categorization in the HTSUS: whether the machine in question is a backhoe or a shovel, the part would be classified under 8431.49.9044.

[7] The Section XVI Notes set out that "parts of machines. . . are to be classified according to the following rules (b) other parts, if suitable for use solely or principally with a particular kind of machine . . . are to be classified with the machines of that kind or in heading . . . 8431." HTSUS § XVI Notes 2; *see also* Explanatory Notes § XVI §II PARTS (§ Note 2).

none of the more specific subheadings apply here, "other" is the relevant term. Under this subheading there are only two options: "[o]f machinery of heading 8426" and "other." The counterweights are a part of a machine that is of heading 8429. "Other" applies. The subheading applicable to the counterweights is 8431.49.90, HTSUS.

The next categories are "[a]ttachments for mounting on machinery," and "other." A counterweight is not an attachment; it is a part of the machine. *See* Pl. Facts ¶ 4. Under this "other" provision are three possible options: "[p]arts of coal or rock cutters and tunneling machinery," "[p]arts of backhoes, shovels, clamshells and draglines," and "[o]ther." As previously established, the mini excavator at issue is a backhoe. Under this provision are two possibilities: "cast axle housings" and "other." "Other" again applies. This classification has three further categories, "road wheels," "wheel and tire assemblies," and "other." A counterweight is not a wheel nor part of a tire assembly. Therefore, the correct classification for the counterweights is 8431.49.9044, HTSUS.

CONCLUSION

For the foregoing reasons, the court grants Customs' motion for summary judgment, and denies in part and grants in part Norca's motion for summary judgment, holding that the government properly classified the subject merchandise under subheading 8431.49.9044, HTSUS, and that the counterweights weighing between 400 kg and 600 kg are excluded via 85 Fed. Reg. 9921, regarding section 301 of the Trade Act of 1974 19 U.S.C. § 2411. Judgment will be entered accordingly.

Dated: July 21, 2023
New York, New York

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

Slip Op. 23–109

CARBON ACTIVATED TIANJIN CO., LTD. AND CARBON ACTIVATED CORPORATION, Plaintiffs, and CALGON CARBON CORPORATION, NORIT AMERICAS, INC., AND DATONG JUQIANG ACTIVATED CARBON CO., LTD., et al., Consolidated Plaintiffs, v. UNITED STATES, Defendant, and CALGON CARBON CORPORATION, NORIT AMERICAS, INC., CARBON ACTIVATED TIANJIN CO., LTD., CARBON ACTIVATED CORPORATION, AND DATONG JUQIANG ACTIVATED CARBON CO., LTD., et al., Defendant-Intervenors.

Before: Mark A. Barnett, Chief Judge
Consol. Court No. 22–00017

[Sustaining the U.S. Department of Commerce's final results in the thirteenth administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China]

Dated: July 21, 2023

John M. Peterson, *Richard F. O'Neill*, and *Patrick B. Klein*, Neville Peterson LLP, of New York, NY, for Plaintiffs/Defendant-Intervenors Carbon Activated Tianjin Co., Ltd., and Carbon Activated Corporation.

Francis J. Sailer, *Dharmendra N. Choudhary*, and *Jordan C. Kahn*, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, of Washington, DC, for Consolidated Plaintiffs/Defendant-Intervenors Datong Juqiang Activated Carbon Co., Ltd., Datong Juqiang Activated Carbon USA, LLC, Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., and Datong Municipal Yunguang Activated Carbon Co., Ltd.

John M. Herrmann, *Julia A. Kuelzow*, *R. Alan Luberda*, and *Melissa M. Brewer*, Kelley Drye & Warren LLP, of Washington, DC, for Consolidated Plaintiffs/Defendant-Intervenors Calgon Carbon Corporation and Cabot Norit Americas, Inc.

Antonia R. Soares, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for Defendant United States. With her on the brief were *Brian M. Boynton*, Acting Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Claudia Burke*, Assistant Director. Of counsel on the brief was *Ashlande Gelin*, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, DC.

OPINION

Barnett, Chief Judge:

This consolidated matter is before the court following the U.S. Department of Commerce's ("Commerce" or "the agency") final results in the thirteenth administrative review ("AR13") of the antidumping duty order on certain activated carbon from the People's Republic of China ("China") for the period of review ("POR") April 1, 2019, through March 31, 2020. *See Certain Activated Carbon From the People's Republic of China*, 86 Fed. Reg. 73,731 (Dep't Commerce Dec. 28, 2021) (final results of antidumping duty admin. review; and final

determination of no shipments; 2019–2020) ("*Final Results*"), ECF No. 16–2, and accompanying Issues and Decision Mem., A-570–904 (Dec. 17, 2021) ("I&D Mem."), ECF No. 16–3.[1]

There are three sets of challenges to the *Final Results*. Plaintiffs Carbon Activated Tianjin Co., Ltd., and Carbon Activated Corporation (collectively, "Carbon Activated") challenge Commerce's selection of surrogate values for carbonized material, coal tar, hydrochloric acid, and steam, selection of surrogate financial ratios, and valuation of ocean freight. *See* Confid. [Carbon Activated's] Mem. of Law. in Supp. of Pl.'s Rule 56.2 Mot. for J. of the Agency R. ("Pls.' Rule 56.2 Mem."), ECF No. 33–1; Reply Br. in Supp. of Pls.' [Carbon Activated's] Rule 56.2 Mot. for J. on the Agency R. ("Pls.' Reply"), ECF No. 45.

Consolidated Plaintiffs Datong Juqiang Activated Carbon Co., Ltd., Datong Juqiang Activated Carbon USA, LLC, Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., and Datong Municipal Yunguang Activated Carbon Co., Ltd. (collectively, "DJAC," and together with Carbon Activated, "Respondents") also challenge Commerce's selection of surrogate values for carbonized materials and coal tar, as well as Commerce's selection of surrogate financial ratios. *See* Confid. Mem. of Law in Supp. of Consol. Pls.' Mot. for J. on the Agency R. Pursuant to USCIT Rule 56.2 ("DJAC's Rule 56.2 Mem."), ECF No. 30; Consol. Pls.' Reply to Def. and Def.-Ints.' Resps. to Consol. Pls.' Rule 56.2 Mot. for J. on the Agency R ("DJAC's Reply"), ECF No. 46.

Consolidated Plaintiffs Calgon Carbon Corporation and Norit Americas, Inc. (together, "Calgon" or "Petitioners") challenge Commerce's selection of the surrogate value for bituminous coal and Commerce's reliance on the consumption of bituminous coal as reported by DJAC. *See* Confid. Consol. Pls.' Rule 56.2 Mem. of Law in Supp. of Mot. for J. on the Agency R. ("Calgon's Rule 56.2 Mem."), ECF No. 32–1; Confid. Consol. Pls.' Reply to Def.'s and Def.-Ints.' Resps. to Consol. Pls.' Mot. for J. on the Agency R. ("Calgon's Reply"), ECF No. 43.

Defendant United States ("the Government") filed a response supporting the *Final Results*. *See* Def.'s Resp. to Rule 56.2 Mots. for J. on the Agency R. ("Def.'s Resp."), ECF No. 36. DJAC, as defendant-intervenors in a member case, and Calgon, as defendant-intervenors in the lead case, also filed responses supporting certain elements of

[1] The administrative record filed in connection with the *Final Results* is divided into a Public Administrative Record ("PR"), ECF No. 16–5, and a Confidential Administrative Record ("CR"), ECF No. 16–4. Parties filed joint appendices containing record documents cited in their briefs. *See* Public J.A. ("PJA"), ECF No. 47; Confid. J.A. ("CJA"), ECF No. 48. Parties subsequently filed supplemental joint appendices with record documents not contained in the CJA or PJA. *See* Public Resp. to Ct.'s Req., ECF No. 50; Confid. Resp. to Ct.'s Req. ("Suppl. CJA"), ECF No. 51.

the *Final Results*. *See* Consol. Def.-Int. DJAC's Resp. to Consol. Pl. Pet'rs' Mot. for J. on the Agency R. Pursuant to USCIT Rule 56.2 ("DJAC's Resp."), ECF No. 38; Def.-Ints.' Resp. Br. ("Calgon's Resp."), ECF No. 37.[2]

JURISDICTION AND STANDARD OF REVIEW

This court has jurisdiction pursuant to section 516A(2)(B)(iii) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(a)(2)(B)(iii) (2018)[3] and 28 U.S.C. § 1581(c). The court will uphold an agency determination that is supported by substantial evidence and otherwise in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(i).

BACKGROUND

I. Administrative Proceedings

On June 18, 2020, Commerce initiated AR13 of the antidumping duty order on certain activated carbon from China. *See Initiation of Antidumping and Countervailing Duty Admin. Reviews*, 85 Fed. Reg. 35,068, 35,070–71 (Dep't Commerce June 8, 2020), PR 61, PJA Tab 3. Commerce selected Carbon Activated and DJAC as "mandatory respondents" for individual examination in AR13 because "they were the two largest exporters of the subject merchandise, by volume, during the POR." Prelim. Decision Mem. ("Prelim. Mem.") at 2, PR 270, PJA Tab 20.

Because Commerce considers China to be a nonmarket economy ("NME") country for purposes of the antidumping laws, *see id*. at 4, the agency determines normal value by valuing the factors of production used in producing subject merchandise, general expenses, profit, and "the cost of containers, coverings, and other expenses" in a surrogate market economy country. 19 U.S.C. § 1677b(c)(1). Commerce identified six potential surrogate countries: Brazil, Malaysia, Mexico, Romania, Russia, and Turkey. Prelim. Mem. at 11. On January 19, 2021, Commerce invited interested parties to comment on Commerce's list of economically comparable countries, surrogate country selection, and surrogate value data. *Id*. at 10. Respondents and Petitioners submitted comments regarding the surrogate country selection process; Petitioners recommended that "Commerce select Malaysia and/or Mexico as either the primary and/or secondary [surrogate country]," while Respondents "did not make an explicit recommenda-

[2] Although Carbon Activated intervened as a defendant-intervenor in a member case, it did not file a response brief in the lead case. *See* Docket.

[3] Citations to the Tariff Act of 1930, as amended, are to Title 19 of the U.S. Code, and references to the U.S. Code are to the 2018 edition, unless otherwise stated.

tion" as to what country should be the primary surrogate country and submitted data from a variety of countries to value the factors of production. *Id*. at 12.

For the *Preliminary Results*, Commerce selected Malaysia as the primary surrogate country because Malaysia was at the same level of economic development as China, was a significant producer of comparable merchandise, and had reliable and usable data to value all factors of production and to calculate surrogate financial ratios. *Id*. at 17. For the *Final Results*, Commerce again selected Malaysia as the primary surrogate country. *See, e.g.*, I&D Mem. at 34 (identifying Malaysia as the primary surrogate country in the context of Commerce's selection of surrogate financial statements).

Carbon Activated, DJAC, and Calgon subsequently challenged various aspects of the *Final Results*.

II. Legal Background

An antidumping duty is "the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise." 19 U.S.C. § 1673. When, as here, "the subject merchandise is exported from a nonmarket economy country," Commerce determines "normal value" by valuing the "factors of production"[4] used in producing the subject merchandise, and "an amount for general expenses and profit plus the cost of containers, coverings, and other expenses" in a surrogate market economy country. *Id*. § 1677b(c)(1).

Section 1677b(c)(1) requires Commerce to value the factors of production "based on the best available information regarding the values of such factors in a[n appropriate] market economy country or countries." *Id*. In deciding what is an "appropriate" market economy country, Commerce must utilize, "to the extent possible, the prices or costs of factors of production" in a market economy country that is at "a level of economic development comparable to that of the [NME] country," and is a "significant producer[] of comparable merchandise." *Id*. § 1677b(c)(4).

Commerce normally will value all factors of production in a single surrogate country, 19 C.F.R. § 351.408(c)(2), referred to as the primary surrogate country, *Jiaxing Brother Fastener Co. v. United States* ("*Jiaxing II*"), 822 F.3d 1289, 1294 & n.3 (Fed. Cir. 2016). To select a primary surrogate country, Commerce has adopted a four-

[4] The "factors of production" include but are not limited to: "(A) hours of labor required, (B) quantities of raw materials employed, (C) amounts of energy and other utilities consumed, and (D) representative capital cost, including depreciation." 19 U.S.C. § 1677b(c)(3).

step approach. *See* Import Admin., U.S. Dep't of Commerce, Non–Market Economy Surrogate Country Selection Process, Policy Bulletin 04.1 (2004), https://enforcement.trade.gov/policy/bull04–1.html (last visited July 21, 2023) ("Policy Bulletin 04.1"). First, the Office of Policy assembles a list of potential surrogate countries that are at a comparable level of economic development to the NME country based on per capita gross national income as reported by the World Bank (the "OP List"). *Id*. at 2. Potential surrogate countries are "not ranked" and are "considered equivalent in terms of economic comparability." *Id*. Second, among the potential surrogate countries, Commerce identifies countries that produce comparable merchandise. *Id*. Third, Commerce determines whether any of the potential surrogates that produce comparable merchandise are significant producers of comparable merchandise. *Id*. at 3. Whether production is "significant" is generally determined in relation to "world production of, and trade in, comparable merchandise." *Id*. Finally, if more than one country satisfies the first three criteria, Commerce selects the country with the best surrogate value data as the primary surrogate country. *Id*. at 4; *see also Jiaxing II*, 822 F.3d at 1293 (citation omitted) (describing the four-step process). Commerce will "only resort to a second surrogate country if data from the primary surrogate country are unavailable or unreliable." *Jiaxing Brother Fastener Co. v. United States* ("*Jiaxing I*"), 38 CIT 1404, 1412, 11 F. Supp. 3d 1326, 1332–33 (2014), *aff'd Jiaxing II*, 822 F.3d at 1289.

Commerce, in selecting surrogate values, "generally selects, to the extent practicable, surrogate values that are publicly available, are product-specific, reflect a broad market average, and are contemporaneous with the period of review." *Jiaxing II*, 822 F.3d at 1293 (citing *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014)); 19 C.F.R. 351.408(c)(1), (4) (directing Commerce to select "publicly available," "non-proprietary information" to value factors of production and "manufacturing overhead, general expenses, and profit"). Commerce also prefers surrogate values that are input-specific and tax- and duty-exclusive. *See* Policy Bulletin 04.1 at 4.

There is no hierarchy for applying the surrogate value selection criteria. *See, e.g., United Steel & Fasteners, Inc. v. United States*, 44 CIT __, __, 469 F. Supp. 3d 1390, 1398–99 (2020); *Hangzhou Spring Washer Co. v. United States*, 29 CIT 657, 672, 387 F. Supp. 2d 1236, 1250–51 (2005) (stating that the court "does not decide . . . whether contemporaneity should be valued over specificity" absent "statutory instruction" to do so). Commerce therefore has broad discretion to

choose which criteria to emphasize in selecting the "best available information" so long as it does so in conformity with the substantial evidence standard. *QVD Food Co. v. United States*, 658 F.3d 1318, 1323 (Fed. Cir. 2011) (citing *Ad Hoc Shrimp Trade Action Comm. v. United States*, 618 F.3d 1316, 1322 (Fed. Cir. 2010)). Commerce must articulate a "rational and reasonable relationship" between the surrogate value and the factor of production it represents. *Globe Metallurgical Inc. v. United States*, 28 CIT 1608, 1622, 350 F. Supp. 2d 1148, 1160 (2004). Due to the discretionary, fact-specific nature of Commerce's determinations, the court does not address "whether the information Commerce used was the best available, but rather whether a reasonable mind could conclude that Commerce chose the best available information." *Jiaxing II*, 822 F.3d at 1300–01.

DISCUSSION

I. Calculation of Surrogate Financial Ratios

a. Additional Background

The administrative record in AR13 contained the financial statements of four companies. *See* I&D Mem. at 32–33. Two financial statements were from Malaysian producers of activated carbon, Century Chemical Works Sdn. Bhd. ("Century") and Bravo Green Sdn. Bhd. ("Bravo Green"). *Id*. at 33. The record also contained financial statements from Joint Stock Company Sorbent ("JSC Sorbent"), a Russian producer of respiratory protection products and activated carbon, and S.C. Romcarbon S.A. ("Romcarbon"), a Romanian producer of polyethylene, polypropylene, polyvinyl chloride, polystyrene processing, filters and protective materials. *Id*.

For the *Final Results*, Commerce determined that the financial ratios of Century and Bravo Green were the best available information for the purpose of calculating surrogate financial ratios for multiple reasons. *See id*. at 35. First, Commerce determined that Malaysia was the only country on the OP List that was a significant producer of comparable merchandise because it was the only "net exporter" of subject merchandise. *Id*. at 32–33. Second, Commerce determined that while Century and Bravo Green's principal business activity was the manufacture and sale of activated carbon, Romcarbon's financial statements indicated that its principal business activity was unrelated to the manufacture or sale of activated carbon, and it was "difficult to ascertain what portion of JSC Sorbent's portfolio relate[d] to [other business activities] and what portion relate[d] to the production of activated carbon." *Id*. at 33. Finally, Commerce explained that having found Malaysia to be the primary surrogate

country, Century and Bravo Green's financial statements were preferable because of the agency's preference for valuing all factors of production in one surrogate country and Malaysia was the only country that provided multiple usable financial statements.[5] *Id*. at 34.

b. Parties Contentions

Respondents challenge Commerce's calculation of surrogate financial ratios using the financial statements of Century and Bravo Green. *See* Pls.' Rule 56.2 Mem. at 8–26; Pls.' Reply at 3–12; DJAC's Rule 56.2 Mem. at 9–24; DJAC's Reply at 1–7. Respondents first contend that Commerce unlawfully calculated surrogate financial ratios because agency policy prohibits Commerce from applying fixed criteria, such as whether a country is a "net exporter" of subject merchandise, in determining whether a surrogate country is a "significant producer" of subject merchandise. *See* Pls.' Rule 56.2 Mem. at 11–17; Pls.' Reply at 5–8; DJAC's Rule 56.2 Mem. at 9–11; DJAC's Reply at 2–4. Respondents further contend that (i) Romania is a "significant producer" of subject merchandise, Pls.' Rule 56.2 Mem. at 17–21; DJAC's Rule 56.2 Mem. at 11–16, (ii) the Malaysian financial statements do not provide reliable financial ratios, Pls.' Rule 56.2 Mem. at 21–24; Pls.' Reply at 8–10; DJAC's Rule 56.2 Mem. at 16–20; DJAC's Reply at 4–6, and (iii) the Romcarbon and JSC financial statements are superior to those of Century and Bravo Green, Pls.' Rule 56.2 Mem. at 24–26; Pls.' Reply at 10–11; DJAC's Rule 56.2 Mem. at 20–24; DJAC's Reply at 6–7.

The Government and Calgon contend that Commerce's selection of financial statements to calculate surrogate financial ratios is supported by substantial evidence. *See* Def.'s Resp. at 12–22; Calgon's Resp. at 9–17. The Government and Calgon first argue that Commerce lawfully determined that Malaysia was the only significant producer of subject merchandise, *see* Def.'s Resp. at 12–16; Calgon's Resp. at 10–13, and, thus, the financial statements of Century and Bravo Green represented the best available information to calculate the financial ratios. *See* Def.'s Resp. at 16–17; Calgon's Resp. at 14–17.

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[5] Commerce explained that the agency has a "long-standing preference to use multiple companies' financial statements whenever practicable because 'using the greatest number of financial statements will yield the most representative data from the relevant manufacturing sector to calculate accurate surrogate financial ratios.'" I&D Mem. at 32 & n.216 (quoting Issues and Decision Mem. for Wooden Bedroom Furniture from China, A-570–890 (Aug. 8, 2007) at 86, https://access.trade.gov/Resources/frn/summary/prc/E7–16584–1.pdf (last visited July 21, 2023).

c. Analysis

As an initial matter, Respondents contend that Commerce's selection of financial statements was flawed based on the agency's finding that only Malaysia was a "significant producer" of comparable merchandise. *See* Pls.' Rule 56.2 Mem. at 11–21; DJAC's Rule 56.2 Mem. at 9–16. Respondents allege that in determining what country was a "significant producer," Commerce limited its analysis to whether a country was a "net exporter," and failed to consider the data quality of proposed surrogate values from OP List countries. *See* Pls.' Rule 56.2 Mem. at 11–17; DJAC's Rule 56.2 Mem. at 9–11.

As noted above, in valuing factors of production, Commerce is directed to use, "to the extent possible," data from an economically comparable market economy country that is a "significant producer [ ] of comparable merchandise." 19 U.S.C. § 1677b(c)(4). "Significant producer" is not defined in the relevant statute or Commerce's regulations. *See* Policy Bulletin 04.1 at 1. Because the term is not defined, Commerce looks to the legislative history and Policy Bulletin 04.1 for guidance. *See, e.g.*, I&D Mem. at 31. Policy Bulletin 04.1 states that in determining whether a country is a "significant producer" of comparable merchandise, "that country should not be judged against the [non-market economy] country's production level or the comparative production of . . . [OP List countries]." Policy Bulletin 04.1 at 3. Instead, the determination of whether a country is a "significant producer" "should be made consistent with the characteristics of world production of, and trade, in comparable merchandise." *Id.* Policy Bulletin 04.1 also lists examples of production levels that would make a country a "significant producer," including being a "significant net exporter." *Id*. at 1 (discussing H.R. Rep. No. 100–576, at 590 (1988) (Conf. Rep.)). Policy Bulletin 04.1 makes clear that "the standard for 'significant producer' will vary from case to case" and that "fixed standards . . . have not been adopted." *Id*. at 3.

Commerce's determination that Malaysia was the only "significant producer" of subject merchandise is supported by substantial evidence. Commerce stated that Malaysia was the only significant producer of comparable merchandise because it was the only OP List country that was a "net exporter," a metric that is both supported by Commerce's policy and indicative of Malaysia having produced sufficient activated carbon to ensure that it exported more than it imported. *See* I&D Mem. at 32–33; *see also* Policy Bulletin 04.1. In addition to this metric, Commerce relied on financial statements on the record to determine whether OP List countries were "significant producers." I&D Mem. at 33; *see also* Prelim. Mem. at 16 (explaining that the statements "provide[] more direct evidence of production of

identical, and therefore, comparable merchandise"). Commerce compared those financial statements to that of Romcarbon, which indicated that activated carbon was not Romcarbon's principal manufacturing activity and thus not evidence of "significant production" of activated carbon in Romania. *See* I&D Mem. at 33.

Respondents argue that in the eleventh administrative review of activated carbon from China ("AR11"), the court invalidated Commerce's finding that Romania was not a significant producer of subject merchandise. *See* Pls.' Rule 56.2 Mem. at 19–20; DJAC Rule 56.2 Mem. at 15–16; *see also Carbon Activated Tianjin Co. v. United States* ("*Carbon Activated AR11*"), 45 CIT __, __, 503 F. Supp. 3d 1278, 1286 (2021). However, in that case, the court faulted Commerce for failing to explain its analysis or reference the value of any country's exports after finding that no country on the OP List was a net exporter by volume. *Carbon Activated AR11*, 503 F. Supp. 3d at 1286. Here, however, Commerce has determined that Malaysia is a net exporter both in terms of quantity and value. *See* I&D Mem. at 32.

Furthermore, in the *Final Results*, Commerce did not rely solely on the fact that Malaysia was the only significant producer of activated carbon to support its selection of Century's and Bravo Green's financial statements. Instead, despite continuing to find that Romania was not a significant producer of activated carbon, Commerce compared Romcarbon's financial statements to those of Century and Bravo Green. *Id*. at 33–35. Commerce acknowledged that the Malaysian financial statements were "not as detailed" as the agency preferred but explained that the financial statements still "provide[d] sufficient information to calculate surrogate ratios for factory overhead costs, [selling, general, and administrative] expenses and profit." *Id*. at 35. Commerce explained that any lesser detail was outweighed by the fact that Century and Bravo Green's principal business activity was the manufacture and sale of subject merchandise; by Commerce's preference to use financial statements from the primary surrogate country; and by Commerce's preference to use financial statements from a country with multiple usable financial statements on the record. *See id*. at 34.

While Respondents would have preferred a different outcome to Commerce's analysis, that is not a basis for the court to reject the agency's conclusion. Respondents simply restate their arguments without identifying any gaps in Commerce's consideration of the issues. Because Commerce adequately explained its selection of Century and Bravo Green's financial statements as discussed above, the court finds that Commerce's decision on this issue is supported by substantial evidence.

II. Valuation of Carbonized Material

a. Additional Background

For the *Final Results*, Commerce valued coal-based carbonized material using Malaysian data under HTS 4402.90.1000, which covers "coconut shell charcoal."[6] I&D Mem. at 38. Respondents argued before Commerce that the agency should instead value coal-based carbonized material using Turkish data under HTS 4402.90, covering "Wood Charcoal (Including Shell or Nut Charcoal), Excluding that of Bamboo." *Id*. at 35. Commerce, however, concluded that the Malaysia data under HTS 4402.90.1000 was the best available information on the record because, like the coal-based carbonized material used by Respondents, coconut shell charcoal is steam activated and has significantly fewer micropores than wood-based carbonized materials. Id. at 38–39. Furthermore, Commerce noted that the record indicated that Respondents did not use carbonized material made from wood or nut charcoal to produce subject merchandise. *Id*. at 39.

b. Parties' Contentions

Respondents contend that Commerce erred in selecting Malaysian coconut shell charcoal data for use as the surrogate value for carbonized materials because (i) the data was non-contemporaneous with the POR; (ii) the record indicated that "coal-based carbonized material" is distinct from coconut shell material and "possesses characteristics that place it between coconut shell charcoal and wood-based charcoal"; and because the court rejected Commerce's use of this data in the twelfth administrative review on certain activated carbon from China ("AR12"). *See* Pls.' Rule 56.2 Mem. at 26–32; Pls.' Reply at 12–15; DJAC's Rule 56.2 Mem. at 25–34; DJAC's Reply at 7–14. Respondents contend that Commerce should have instead selected Turkish import data for HTS subheading 4402.90 as the surrogate value for carbonized materials. Pls.' Rule 56.2 Mem. at 32–33; DJAC's Rule 56.2 Mem. at 34–37.

The Government and Calgon contend that substantial evidence supports Commerce's use of Malaysian import data under HTS 4402.90.1000 to calculate the surrogate value for carbonized material. *See* Def.'s Resp. at 22–25; Calgon's Resp. at 17–24.

c. Analysis

As an initial matter, "each administrative review is a separate exercise of Commerce's authority that allows for different conclusions

[6] Specifically, HTS 4402.90.1000 covers "Wood Charcoal (Including Shell or Nut Charcoal, Other Than of Bamboo: Of Coconut Shell)." I&D Mem. at 38.

based on different facts in the record." *Jiaxing II*, 822 F.3d at 1299 (quoting *Qingdao Sea-Line*, 766 F.3d at 1387). Thus, the court's treatment of Commerce's selection of Malaysian coconut shell charcoal import data in AR12 does not necessarily mean that Commerce improperly selected that data in AR13.[7]

In *Carbon Activated Tianjin Co. v. United States* ("*Carbon Activated AR12*"), 46 CIT __, 586 F. Supp. 3d 1360 (2022), the court faulted Commerce for selecting coconut shell charcoal to value carbonized material because although Commerce found that the respondent's suppliers did not purchase carbonized material made from wood or nut charcoal, Commerce failed to make an analogous finding as to whether respondent's suppliers purchased carbonized material made from coconut shell charcoal. *Id*. at 1379. The court concluded that "[a]bsent evidence [of use of] coconut shell charcoal, Commerce's selection of [coconut shell charcoal] over [other wood charcoal] was unsupported by substantial evidence." *Id*.

Here, unlike in the original determination in AR12, Commerce provided a reasoned explanation as to why coconut shell charcoal was a more appropriate proxy for the coal-based carbonized material used by respondents than wood charcoal. *See* I&D Mem. at 38–39. First, the record indicates that "both coconut shell- and coal-based carbonized material are steam activated[,] whereas wood-based carbonized material is generally chemically activated," impacting "the ultimate physical structure of the carbonized material." *Id.* at 38. Second, the record showed that coconut shell- and coal-based carbonized materials had a different level of filtration than wood-based activated carbon. *See id.* at 39 (noting that coconut shell- and coal-based carbonized materials have a "'substantial' amount of micropore surface area," while wood-based activated carbon has significantly fewer micropores and consists mostly of mesopores and macropores).[8] Furthermore, Commerce explained that while its selected data was non-

[7] Furthermore, the court sustained Commerce's use of import data under HTS 4402.90.1000 to value carbonized materials on remand. *See Carbon Activated Tianjin Co. v. United States*, Slip Op. 23–66, 2023 WL 3151091, at *4–5 (CIT Apr. 28, 2023).

[8] Respondents also contend that the agency overstated similarities between coconut shell- and coal-based carbonized materials and failed to consider record evidence contradicting the agency's findings. Respondents argue that "wood based activated carbon . . . is produced by either steam or phosphoric acid activation," DJAC's Rule 56.2 Mem. at 28 (quoting Final Surrogate Value Cmts. by DJAC and CA Tianjin (May 19, 2021) ("Final SV Submission"), Ex. 1-K, PR 230–42, PJA Tab 16); that "coconut shell [charcoal]. . . contains 50 percent more micro-pores than bituminous coal," *id.* (quoting Final SV Submission, Ex. 1-E); and that such evidence refutes Commerce's findings regarding the differences in the activation of, and filtration levels, of coconut shell-, coal-, and wood-based carbon materials, *see id.* at 27–28; *see also* Pls.' Rule 56.2 Mem. (arguing that there is overlap among the properties of wood-, coal- and coconut-based carbonized materials). While a reasonable case might be made that HTS 4402.90 provided the best surrogate value for carbonized material because the physical characteristics of coal-based carbonized material placed it somewhere between

contemporaneous with the POR, the agency "favor[ed] specificity over contemporaneity" in AR13 based on its finding that HTS 4402.90.1000 was the most appropriate proxy to value the carbonized material used by Respondents. *See id.* at 40.[9] Because Commerce adequately explained its reliance on Malaysian import data under HTS 4402.90.1000 to value carbonized material, the court finds Commerce's determination on this issue is supported by substantial evidence.

III. Valuation of Coal Tar

a. Additional Background

For the *Preliminary Results*, Commerce valued coal tar using Malaysian HTS subheading 2706.00[10] covering "Mineral Tars, Including Reconstituted Tars." *See* I&D Mem. at 26.

In its supplemental questionnaire response, DJAC included a test report showing that the predominant constituent of the coal tar utilized by its supplier was pitch, valued under Malaysian HTS subheading 2708.10 (Pitch from Coal and Other Mineral Tars). *See* Suppl. Section D Questionnaire Resp. (May 21, 2021) ("Suppl. SDQR"), Ex. SD-33, CR 146–73, PR 243–56, CJA Tab 17. The average unit value ("AUV") for coal tar was around $1.56/kg, while the AUV for pitch was around $1.00/kg.[11] *See* Surrogate Values for the Prelim. Results (June 18, 2021) ("Prelim. SV Mem.") at 4, PR 273–74, PJA Tab 21.

Respondents requested that Commerce instead use the Malaysian domestic market price of $0.216/kg to value coal tar. *See* Case Br. of [Respondents] Respondents' Case Br. at 61–62. Respondents' argued that the Malaysian import data for coal tar was unreliable because (1) it is uncommon for value-added products to be sold at less than the

coconut shell charcoal and wood-based charcoal, Commerce made a reasonable case that coconut shell charcoal and coal based carbonized material were more similar because both were steam activated (as opposed to chemically-activated) and had higher filtration levels than wood-based charcoal. *See* I&D Mem. at 38–39. The fact that it is possible to "draw[ ] two inconsistent conclusions from the evidence" does not mean that Commerce's determination is unsupported by substantial evidence. *Consolo v. Fed'l Maritime Comm'n*, 383 U.S. 607, 620 (1966).

[9] Finally, Respondents contend that Commerce should have used data from a second surrogate country, Turkey, because of the lack of usable contemporaneous data from Malaysia. *See* Pl.'s Rule 56.2 Mem. at 26–27, 32–33; DJAC's Rule 56.2 Mem. at 34–37. Having found that Commerce's selection of Malaysian data is supported by substantial evidence, there is no basis for the court to require the inclusion of additional surrogate values from outside the primary surrogate country.

[10] The court refers to HTS 2706.00 herein as "coal tar."

[11] Prices calculated using a conversion rate of 1 Malaysian Ringgit to $0.24 U.S. dollars. *See* DJAC's Rule 56.2 Mem. (citing to Case Br. of [Respondents] (Sept. 27, 2021) ("Respondents' Case Br.") at 52 no.94, CR 214–215, PR 295–96, CJA Tab 28.

price of raw material, (2) an occurrence of this unlikely scenario in the Malaysian import data was likely caused by the predominance of Spanish imports as an overall percentage of Malaysian coal tar import data, and (3) the domestic price of coal tar was so much lower than the import price of coal tar that it would not make economic sense to consume imported coal tar. *See* Respondents' Case Br. at 57–60.

Commerce continued to value coal tar using import data under Malaysian HTS subheading 2706.00 for the *Final Results*. I&D Mem. at 26–27. Commerce disagreed with Respondents that the AUV for Malaysian HTS 2706.00, being higher than that of Malaysian HTS 2708.10, distorted its reliability as a surrogate value, stating that "there may be factors involved with pricing apart from the cost of manufacturing that impact a product's value" that could "cause a product with less 'value-added' like coal tar to be more expensive than another product." *Id.* at 26. Commerce stated that Respondents failed to provide specific evidence explaining "why the pattern of Spanish imports into Malaysia under HTS 2706.00 [were] priced higher than those under HTS 2708.10" and, thus, had failed to show that Malaysian HTS 2706.00 import data were unreliable. *Id.* at 26–27. Finally, Commerce explained that it could not verify the alternative surrogate value data provided by Respondents because it came from a private market report and the report did not explain the methodology used to obtain the reported prices. *Id*. at 27. As a result, Commerce concluded that it could not "determine how representative the prices are of a broad market average or if they are tax- and duty-exclusive." *Id*.

b. Parties' Contentions

Respondents argue that Malaysian HTS subheading 2706.00 import data is unreliable because the AUV for HTS subheading 2706.00 significantly exceeded the AUV of a higher value-added product, pitch. Pls.' Rule 56.2 Mem. at 33–35; Pls.' Reply at 15–17; DJAC's Rule 56.2 Mem. at 39–45; DJAC's Reply at 14–17. Respondents argue that Commerce failed to respond to arguments they advanced in the administrative proceedings, failed to account for contrary record evidence regarding the aberrancy of the AUV for Malaysian HTS 2706.00, and improperly refused to benchmark Malaysian coal tar and pitch AUVs with the domestic market price data of those products in Malaysia and other market economy countries. Pls.' Rule 56.2 Mem. at 33–37; DJAC's Reply at 17–22.

The Government and Calgon contend that Commerce lawfully determined that Malaysian import data under HTS subheading 2706.00

are the best available information on the record to value coal tar. *See* Def.'s Resp. at 29; Calgon's Resp. at 25–27. The Government contends that there is no record evidence demonstrating that the data are aberrant based on the AUV of coal tar being higher than that of pitch, or that the majority of imports of coal tar and pitch having originated from Spain rendered the data unreliable. *See* Def.'s Resp. at 29–31. Finally, the Government contends that Commerce lawfully refused to benchmark Malaysian coal tar and pitch AUVs with the domestic market price data of these products in Malaysia, Russia, and other market economies because the record lacked publicly-available domestic prices to use as a comparison with import AUVs. *See id*. at 31–33.

c. Analysis

Respondents advance the same arguments they raised before Commerce in support of the contention that Malaysian import data under HTS subheading 2706.00 were aberrant and should not have been used to value coal tar. *See* Pls.' Rule 56.2 Mem. at 33–37; DJAC's Rule 56.2 Mem. at 39–45; DJAC's Reply at 14–18. The court finds that Commerce supported its reliance on Malaysian import data under HTS 2706.00 with substantial evidence. As Commerce explained, Respondents failed to identify record support for their arguments. I&D Mem. at 26–27. With respect to the argument that the Malaysian data was aberrant because the AUV of the value-added product, pitch, was lower than that of coal tar, a raw material, Respondents did not provide evidence to support their inference that the higher value-added product necessarily should be priced higher on the same per weight basis. As Commerce noted, there could be multiple factors affecting the pricing of coal tar and pitch imports that would lead to these pricing trends, such as lower demand for the value-added product or the nature of the further processing (e.g., combining the input with other low-value, high-weight inputs). *See id.* at 26.

Respondents' arguments that the Malaysian coal tar import data are tainted by the predominance of Spanish imports as an overall percentage of Malaysian import data simply shifts this price relationship issue to the Spanish data, but again, as Commerce found, Respondents failed to provide evidentiary support for their assertion that the Spanish data were aberrant. *See id.* at 26–27. First, the import prices for Spanish coal tar and pitch do not appear to be outliers as the import price for both are lower than the overall Malaysian import prices for coal tar and pitch. *See* Respondents' Case Br. at 58. Second, as discussed above, there are many factors that may impact domestic prices in such a way that a value-added product sells

at a lower per weight price than the raw material used in its manufacture. The data on which Respondents rely provide a potential example of such a factor. During the POR, Spain imported nearly five times as much coal tar as it exported. *See* Final SV Submission, Ex. 2-M. Such an imbalance could indicate that there is little domestic production of coal tar in Spain. Furthermore, Respondents' contention that the Spanish data was aberrant because coal tar was traded in the Spanish market at a third of the price at which it was exported to Malaysia, *see* DJAC's Rule 56.2 Mem. at 41–42, is not supported by the data. While the AUVs of Spanish exports vary significantly from country to country, there is no evidence that exports to Malaysia were priced significantly higher than those to other countries.[12] *See* Final SV Submission, Ex. 2-M. Finally, Commerce supported its determination by comparing Malaysian import data for coal tar to that of the import data for coal tar from other OP List countries, finding that the Malaysian prices were not aberrant because the Malaysian prices were approximately 46 percent of the highest import price for other OP List countries. I&D Mem. at 27.

Respondents suggest that Commerce should have benchmarked Malaysian coal tar and pitch import prices against the domestic market prices in Malaysia, and that Commerce unlawfully rejected the domestic pricing data contained in the Coal Tar and Coal Tar Pitch Market Report ("Market Report") Respondents submitted. Pls.' Rule 56.2 Mem. at 36; DJAC's Rule 56.2 Mem. at 42–46. While Respondents assert that the Market Report was publicly available, Respondents have not identified record evidence to support that assertion, nor did the court's independent review of the record uncover such evidence. Respondents contend that Commerce should have relied on the Market Report because "[t]he record is devoid of any evidence suggesting the Market Report is not freely available" and "[t]he Market Report is evidently not a price quote." DJAC's Rule 56.2 Mem. at 19–20; see also Pls.' Rule 56.2 Mem. at 36. However, it is incumbent upon an interested party, and not Commerce, to create the record, *see Qingdao Sea-Line*, 766 F.3d at 1386, and absent record evidence detracting from Commerce's decision to disregard the Market Report, Commerce's determination to rely on Malaysian HTS 2706.00 is supported by substantial evidence.

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[12] The AUV for exports of Spanish coal tar typically fell between $1.00/kg and 1.20/kg, whereas Spanish exports to Malaysia fell squarely within that range ($1.034/kg). *See* Final SV Submission, Ex. 2-M. The primary data point impacting driving down Spain's total AUV for coal tar during the POR was its exports to Denmark, which were priced significantly lower than those to other countries ($0.35/kg) and accounted for over two-thirds of total Spanish exports of coal tar. *See id*.

IV. Valuation Of Hydrochloric Acid

a. Additional Background

To value hydrochloric acid,[13] Commerce selected Malaysian import data for HTS 2806.10 which covers "hydrogen chloride (hydrochloric acid)," *see* I&D Mem. at 45, and which constitutes a basket category including both anhydrous hydrogen chloride and aqueous hydrochloric acid, *see* Pls.' Rule 56.2 Mem. at 38. Commerce explained that, because Malaysia is the primary surrogate country, its "regulatory preference for valuing all [surrogate values] from one surrogate country" meant that its "first preference in selecting [surrogate value] data . . . is to utilize publicly available prices within Malaysia." *Id.* Commerce, therefore, declined Respondents' request to rely on Brazilian import data under HTS subheading 2806.10.20. *Id*. at 45–46.

In response to Respondents' argument that Malaysian HTS 2806.10 was not specific to Carbon Activated's inputs, which consisted only of aqueous HCl, Commerce explained that record evidence "only demonstrate[d] the purity level of HCl . . . for a portion of the total quantity of HCl used in production." *Id.* at 46 & n.307 (citing Carbon Activated's Suppl. Section D Questionnaire Resp. (May 13, 2021), Ex. SD-10.1 ("Aug. 2019 Test Report"), CR 92, PR 220, Suppl. CJA Tab 2). Commerce also noted that the record contained "certain information related to HCl" but that Respondents had "failed to provide an explanation as to how these documents tie to the [surrogate value] and actual consumption of the HCl . . . reported for the POR." *Id.* at 46.

b. Parties' Contentions

Carbon Activated contends that substantial evidence does not support Commerce's use of Malaysian HTS subheading 2806.10 to value the HCl used by Carbon Activated. Pls.' Rule 56.2 Mem. at 37–39; Pls.' Reply at 17–18. Carbon Activated contends that HTS subheading 2806.10, which covers two forms of HCl, (i) anhydrous or liquid HCI (without added water) and (ii) aqueous HCI (with added water), was not specific to the diluted aqueous HCl Carbon Activated used, Pls.' Rule 56.2 Mem. at 38, and, thus, Commerce should have valued its HCl inputs using import data under Brazilian HTS subheading 2806.10.20, *id*. at 39.

The Government contends that Carbon Activated failed to substantiate its use of aqueous HCI and that Commerce's selection of the Malaysian data is otherwise supported by substantial evidence. Def.'s Resp. at 33–35.

[13] "HCl" is the chemical formula for hydrogen chloride; the parties have used this formula interchangeably with the terms hydrochloric acid and hydrogen chloride.

c. Analysis

It is Respondents' burden to build a record that supports their desired outcome. *See QVD Food Co.*, 658 F.3d at 1324. Here, Commerce's determination that Carbon Activated failed to demonstrate the aqueous nature of all their HCl inputs is supported by substantial evidence. *See* I&D Mem. at 46.

In support of their contention that they used only aqueous HCl in the production of subject merchandise, Carbon Activated cites to a document of limited utility. *See* Pls.' Rule 56.2 Mem. at 38 (citing Aug. 2019 Test Report). The document, which is not fully translated, contains two pages, one of which is titled "HCl (Liquid) Test Report," and includes the terms "date," "concentration," and "inspector." Aug. 2019 Test Report. Carbon Activated claims that "HCl with purity levels less than 100 [percent] are considered aqueous solutions," and that the test report demonstrates that the concentration level of the HCl supplied to Carbon Activated was aqueous. Pls.' Rule 56.2 Mem. at 38.

As Commerce explained, the test report only demonstrated the purity level of HCl for a portion of Carbon Activated's purchases over a limited period of time. I&D Mem. at 46. It is reasonable for Commerce to require parties to demonstrate the purity level for all purchased HCl; parties cannot submit limited information to Commerce and expect the agency to extrapolate that data to all missing data to the benefit of the party.

Furthermore, Commerce explained that Respondents had failed to provide an explanation as to how other record documents, including information relating to HCl published by PubChem and a safety datasheet from Woodman Hill Ltd., tied to the surrogate value and actual consumption of HCl reported for the POR. I&D Mem. at 46 & n. 308 (citing DJAC and Carbon Activated Surrogate Value Comments (Mar. 4, 2021) ("Respondent SV Cmts."), Exs. 6D, 6E, PR114–76, PJA Tab 11). Nor does Carbon Activated attempt to demonstrate the relevance of these documents before the court (except to demonstrate the existence of two forms of HCI). Pls.' Rule 56.2 Mem. at 38. The existence of two forms of HCI fails to establish that the substance reported in the test report "HCl (Liquid)" constitutes aqueous HCI; while the test report indicates the "concentration" of HCl, it does not explain that the only contaminant diluting its purity was water. *See* Aug. 2019 Test Report.

Having reviewed the record evidence and Commerce's explanation, the court finds that Commerce's determination to value HCl using Malaysian import data for HTS subheading 2806.10 is supported by substantial evidence.

V. Valuation of Steam

a. Additional Background

Commerce valued steam using Malaysian import data for HTS 2711.11, which covers liquefied natural gas. I&D Mem. at 48.

b. Parties' Contentions

Carbon Activated contends that HTS subheading 2711.21, covering natural gas in a gaseous state constitutes "the best available information" on the record. Pls.' Rule 56.2 Mem. at 40–43; Pls.' Reply at 18–19. Carbon Activated argues that the agency failed to support its selection of HTS 2711.11 given that record evidence shows that Carbon Activated consumed gaseous natural gas and that domestic gaseous natural gas prices in Malaysia were available at "significantly lower prices" during the POR, contradicting the reliability of Malaysian HTS 2711.11 import data. Pls.' Rule 56.2 Mem. at 40–43.

The Government responds that Malaysian import data for liquefied natural gas was the best available information in the record to value steam because this data was publicly available and from the primary surrogate country. *See* Def.'s Resp. at 35. The Government further contends that import data for liquefied natural gas was a more appropriate source to value steam input than import data under Malaysia HTS 2711.21 because the data for liquefied natural gas imports "represent a significantly larger volume of imports . . . from multiple countries . . . covering the entirety of the period of review whereas the import data under HTS 2711.21 represent a smaller volume of imports from only one country [ ] covering only two months of the period of review." Def.'s Resp. at 35–36.

c. Analysis

Carbon Activated first argues that Commerce has "not adequately explained why [liquefied natural gas] is an appropriate substitute over natural gas in the gaseous state," Pls.' Rule 56.2 Mem. at 41, because the agency "failed to explain how the use of [liquefied natural gas] explains the cost incurred by plaintiffs when they did not use a liquid to produce steam, and instead used natural gas in a gaseous state," *id.* at 42. The court has previously rejected the argument that Commerce may not select liquefied natural gas as a surrogate because it is not "specific" to steam, noting that "the energy source input need not be in the same phase (solid, liquid, gaseous) as the steam the energy creates." *Carbon Activated AR12*, 586 F. Supp. 3d at 1377. Carbon Activated's argument is no more developed in this case than it was in AR12, and the court remains unconvinced.

Carbon Activated's reliance on *Yantai Oriental* to support the use of domestic gaseous natural gas prices also fails. *See* Pls.' Rule 56.2 Mem. at 41–42 (citing *Yantai Oriental Juice Co. v. United States*, 26 CIT 605, 617 (2002)). In *Yantai Oriental*, "Commerce nowhere explain[ed] how the use of seemingly more expensive imported coal data [was] the best available information," 26 CIT at 617, whereas here, Commerce explained that the domestic natural gas prices identified by Respondents were unreliable and did not represent the best available information, I&D Mem. at 49. As in AR12, Commerce was unable to establish the underlying methodology Respondents used to derive and collect domestic natural gas prices. *See id*.

Furthermore, as Commerce explained, of the six identified sources of data for domestic natural gas prices, only two were partially within the POR, one showing only the price for residential use, and the other only for commercial use. *Id*. Additionally, the data that were partially within the POR were from one company with an unclear geographic scope. *Id*. Commerce thus supported its rejection of the domestic data based on lack of contemporaneity and because it did not "represent a broad market average." *Id*.

Commerce has the discretion to choose which criteria to prioritize in selecting what constitutes the "best information available." *See QVD Food Co.*, 658 F.3d at 1323. The court declines to interfere with Commerce's discretion in selecting among potential surrogate values because the agency has adequately explained its selection of HTS subheading 2711.11 and supported its selection with substantial evidence.

VI. Valuation of Ocean Freight

a. Additional Background

The administrative record contained two sets of data, one from Maersk and the other from Descartes, for valuing ocean freight expenses. *See* I&D Mem. at 42. Commerce determined that the Maersk data represented the best available information to value Respondents' ocean freight expenses because the data covered the entire POR, whereas the Descartes data covered less than one-half of the POR. *Id*. at 42–43. Furthermore, Commerce found that the rates contained in the Maersk data represented actual freight charges, whereas the Descartes data contained only "approximations" of freight charges. *Id.* at 43.

b. Parties' Contentions

Carbon Activated contends that Commerce erred in selecting the Maersk data over the Descartes data because the freight charge

quotes contained in the Maersk data "are unreliable and do not represent consummated transactions." Pls.' Rule 56.2 Mem. at 44; Pls.' Reply at 20–21. The Government responds that substantial evidence supports Commerce's selection of the Maersk data to value ocean freight expenses. Def.'s Resp. at 38.

c. Analysis

This issue boils down to a disagreement over the factual information contained on the record. The Government contends that the Maersk rates represent actual shipping rates, and that the Descartes data covers only part of the POR and are not product specific. *See* Def.'s Resp. at 38–39. Carbon Activated, on the other hand, contends that the rates contained in the Maersk data do not represent consummated transactions, and that the Descartes data contain freight charges representing actual transactions covering comparable merchandise for all twelve months of the POR. Pls.' Rule 56.2 Mem. at 44–46.

The court's review of these data sets indicates that Commerce's selection of the Maersk data is supported by substantial evidence. First, Carbon Activated has not provided any evidence undermining Commerce's determination that the Maersk data represented actual tariff rates and not approximations. Carbon Activated argues that the language in the Maersk data stating, "[t]his look up is not covered by a service contract, therefore tariff rates have been applied," indicates that the Maersk data "does not represent actual shipments, but instead is based upon quotes." Pls.' Rule 56.2 Mem. at 45; *see also* Pet'rs.' Submission of Surrogate Values (Mar. 4, 2021), Att. 6C, PR 177–78, CJA Tab 12. The meaning of this disclaimer in the Maersk data is unclear, but the court finds that the inclusion of the language "tariff rates have been applied" is not inconsistent with Commerce's acceptance of them as based on actual transactions.[14] Likewise, Carbon Activated's contention that the Maersk data are unreliable because the prices remained static throughout the POR is without merit. *See* Pls.' Rule 56.2 Mem. at 45. Carbon Activated assumes that ocean freight prices fluctuate frequently throughout the year but fails to support that assertion with evidence.

Even if the alleged flaws in the Maersk data exist, Carbon Activated has failed to show that the Descartes data was the best available information to value ocean freight. Carbon Activated has not provided any evidence to support its contention that the Descartes data rep-

[14] Although Commerce did not address the meaning of this language specifically in the *Final Results*, Commerce was clear that it found the Maersk data to be based on "actual consummated transactions." *See* I&D Mem. at 43. The court finds that the language "tariff rates have been applied" is consistent with such a finding by the agency.

resents actual transactions. Each of the shipping rates contained in the Descartes data contain a disclaimer stating that the rates are merely "[e]stimates of freight charges . . . furnished as a convenience . . . and represent nothing more than an approximation of freight charges."[15] Respondent SV Cmts., Ex. 13B. *See* I&D Mem. at 42; Respondent SV Cmts., Ex. 13B. Furthermore, the Descartes data cover only a part of the POR. *See* I&D Mem. at 42–43; *see also* Respondent SV Cmts., Exs. 13A, 13B. For these reasons, Carbon Activated has failed to show that Commerce erred in not selecting the Descartes data. Commerce's selection of the Maersk data to value ocean freight is supported by substantial evidence.

VII. Valuation of Bituminous Coal

a. Additional Background

For the *Preliminary Results*, Commerce used Malaysian imports under HTS subheading 2701.12 (Bituminous Coal, Whether or Not Pulverized, But Not Agglomerated) to value bituminous coal used in the production of activated carbon. I&D Mem. at 21.

In their administrative briefing, Respondents contended that Commerce should value the bituminous coal used by DJAC and its supplier using Malaysian import data under HTS 2701.19 (Other Coal). Respondents' Case Br. at 34. Respondents argued that because the bituminous coal used by DJAC had a Useful Heat Value ("UHV") of less than 5,833 kcal/kg, it did not reach the heat value threshold to be classifiable under HTS subheading 2701.12, which is defined, in part, by a calorific value limit equal to or greater than 5,833 kcal/kg. *See id*. at 32–33. Petitioners argued that Respondents conflated the UHV scale with the Gross Calorific Value ("GCV") scale, which uses higher numbers than the UHV scale, and that using the GCV scale, the bituminous coal used by DJAC and its supplier resulted in a heat value above the 5,833 kcal/kg required for valuation under HTS subheading 2701.12. *See* Pet'rs' Rebuttal Br. (Oct. 6, 2021) at 25–28, CR 218, PR 303, CJA Tab 31. Petitioners further argued that the UHV scale was developed for the Indian coal industry only and, thus, is not reflected in the HTS Notes. *See id.* at 26–27.

[15] Commerce also found that the Descartes data was not the best available information because it was not "product-specific." For example, while the Descartes data for April 15, 2019, covers activated carbon, it also covers merchandise such as "automobiles & parts," candles, chairs, Christmas decorations, "tires & tubes," and over one-hundred other products that are not subject merchandise. *See* Respondent SV Cmts., Ex. 13B. It is unclear whether the record indicates that ocean freight rates are dependent upon the good being transported within a standard container, nevertheless, Commerce's conclusion that the Descartes data did not represent actual transactions and did not cover the entire POR is adequate to support its decision to select the Maersk data.

For the *Final Results*, Commerce used Malaysian import data under HTS subheading 2701.19 as the surrogate value for bituminous coal. *See* I&D Mem. at 20. In doing so, Commerce relied on its finding in AR11, in which it determined, on court-ordered remand, that bituminous coal with a calorific value of less than 5,833 kcal/kg should be classified under HTS 2701.19. *See id.* at 21–22. Specifically, in AR11, Commerce found that Note 2 to Chapter 27 of the HTS ("Note 2") limits the applicability of HTS subheading 2701.12 to bituminous coal with "a calorific value limit . . . equal to or greater than 5,833 kcal/kg." *Carbon Activated Tianjin Co. v. United States* ("*Carbon Activated AR11 Remand*"), 45 CIT __, __, 547 F. Supp. 3d 1310, 1314 & n.6 (2021). Here, Commerce found that there was "insufficient record evidence to demonstrate that the heat values discussed in [Note 2] are derived using either the UHV or GCV scale because the notes do not explicitly state one way or the other" and, therefore, Commerce declined to adopt Petitioners' interpretation of the import statistics. I&D Mem. at 21.

b. Parties' Contentions

Calgon contends that Commerce erred in using Malaysian import data under HTS subheading 2701.19 to value bituminous coal used by DJAC and its supplier. Calgon's Rule 56.2 Mem. at 12–18; Calgon's Reply at 2–6. Calgon challenges the agency's finding that the record failed to establish which scale was referenced in Note 2. Calgon's Rule 56.2 Mem. at 13. Calgon also challenges Commerce's reliance on its remand determination in AR11 without applying it to the unique facts of AR13. *Id*. at 17–18; Calgon's Reply at 5–6. Calgon further argues that Commerce failed to address evidence detracting from its conclusion that Malaysian import data under HTS 2701.19 was the best information on the record. Calgon's Reply at 2–5.

The Government responds that Commerce's selection of HTS subheading 2701.19 to value bituminous coal is supported by substantial evidence. Def.'s Resp. at 40. The Government contends that record evidence does not indicate whether the UHV or GCV scale applies in Note 2 or that the UHV scale is specific to the Indian industry. *Id*. at 41–42. The Government also maintains that Commerce correctly applied its AR11 practice of valuing bituminous coal with a known heat value of less than 5,833 kcal/kg under HTS subheading 2701.19 in AR13. *See id*. at 42–43. DJAC agrees that Commerce's selection of HTS 2701.19 to value bituminous coal is supported by substantial evidence. *See* DJAC's Resp. at 2–12.

c. Analysis

Calgon first contends that Commerce failed to address record evidence that the heat values discussed in Note 2 are derived using either the UHV or GCV scale. *See* Calgon's Rule 56.2 Mem. at 13. Calgon argues that, because the formulas for the UHV and GCV tests can result in differing classification of coal, and because the record evidence relating to the UHV scale only applied to the state of coal mining in India, the record indicated that the UHV scale was specific to the Indian coal industry. *See* Calgon's Rule 56.2 Mem. at 13–15.

Contrary to Calgon's contentions, Commerce did address Calgon's arguments and record evidence detracting from its decision. Commerce explained that it was following its practice in AR11, in which it determined that, due to the applicability of Note 2, bituminous coal with a heat value below 5,833 kcal/kg should be valued using HTS 2701.19. I&D Mem. at 21. Commerce then explained that no record evidence addressed whether the heat values discussed in Note 2 are derived using either the UHV or GCV scales, but acknowledged that, in the past, Commerce used values derived from the UHV scale in its determinations in this proceeding. *See id.* at 21–22 & n.140 (citing Issues & Decision Mem. for Activated Carbon from China, A-570–904 (Nov. 2, 2012) ("AR4 IDM"), https://access.trade.gov/Resources/frn/summary/prc/2012–27423–1.pdf (last visited July 21, 2023).[16]

Calgon next contends that Commerce failed to support its interpretation of HTS subheadings 2701.12 and 2701.19 with substantial evidence. *See* Calgon's Rule 56.2 Mem. at 16. Calgon argues that Commerce's specific focus on heat value is flawed because the agency failed to analyze the meaning of the HTS subheadings beyond heat value, as the agency had done in AR11. *Id.* at 17. In AR11, however, Commerce analyzed the plain language of HTS subheadings 2701.12 and 2701.19 only to the extent that the record lacked evidence regarding the heat value of certain bituminous coal used by an uncooperative supplier. *See Carbon Activated AR11 Remand*, 547 F. Supp. 3d at 1316–1318 (noting that without evidence of the heat values of bituminous coal used by the respondent's suppliers, Commerce relied on the plain language of the HTS descriptions to determine the best

[16] Calgon argues that Commerce's citation to AR4 IDM is inapposite because, in AR4, Commerce found that the data it selected had a UHV that matched the UHV reported by the respondent, whereas here, record evidence indicates that UHV is not reflected in the Malaysian import statistics to value bituminous coal but is instead a measurement limited in use to the Indian coal industry. *See* Calgon's Rule 56.2 Mem. at 15–16. Calgon, however, fails to point to any record evidence indicating that the UHV scale is so limited, and Commerce need not address such undeveloped, unsupported contentions. *Cf. Timken U.S. Corp. v. United States*, 421 F.3d 1350, 1354–57 (Fed. Cir. 2005) (finding that an agency need not address every argument made by parties, but only those involving material issues of law or fact).

available surrogate value). When Commerce had the heat value information, Commerce relied on that information in connection with the HTS descriptions to select the surrogate value for bituminous coal with a known heat value of less than 5,833 kcal/kg. *See id.* at 1317–18.

Calgon also argues that Commerce's reliance on AR11 does not constitute substantial evidence. *See* Calgon's Rule 56.2 Mem. at 17. Calgon argues that the AR13 record contains evidence specifying "that HTS subheading 2701.12 covers 'bituminous coal' including coking and non-coking bituminous coal that are classifiable under HTS subheading 2701.12.1000 and HTS subheading 2701.12.9000." *Id.* at 17–18. The fact that HTS subheading 2701.12 covers both coking and non-coking bituminous coal does not contradict Commerce's determination. Commerce agreed with Calgon's assertion, *see* I&D Mem. at 22; however, Commerce found HTS subheading 2701.12 to be *overbroad* because DJAC and its supplier used *only* non-coking bituminous coal, and, when interpreted in conjunction with Note 2, HTS subheading 2701.19 was more specific, *id*.

Based on the foregoing, the court finds that Commerce's determination to value bituminous coal using Malaysian import data under HTS subheading 2701.19 is supported by substantial evidence.

VIII. Commerce's Acceptance of DJAC's Reporting of Bituminous Coal Consumption

a. Additional Background

Commerce must determine the normal value of subject merchandise by valuing the factors of production, which include the "quantities of raw materials employed." 19 U.S.C. § 1677b(c)(3)(B). Accordingly, Commerce requested, and DJAC reported, the specific quantities of inputs used to produce activated carbon, including bituminous coal. *See* DJAC Section D Resp. (Sept. 17, 2020) ("DJAC SDQR"), Ex. D-6, CR 36–41, PR 84, CJA Tab 5. DJAC reported both the total quantity of bituminous coal it consumed during the period of review as well as the total quantity of bituminous coal consumed to produce merchandise under consideration. *See* DJAC Suppl. Section D Resp. (May 21, 2021) ("DJAC Suppl. SDQR") at 11–12, CR 146–73, PR 243–56, CJA Tab 17 (explaining the reporting method it used in its initial section D questionnaire response); *see also* DJAC SDQR, Ex. D-6.

Petitioners asserted that there was a discrepancy between the two consumption figures as reported by DJAC. *See* Pet'rs' Cmts. Concerning Section D Questionnaire Resp. of DJAC (Dec. 4, 2020) at 9–10, CR 55, PR 90, CJA Tab 7. Commerce instructed DJAC to reconcile that

difference. *See* Letter from [Commerce] to DJAC, Suppl. [Section D] Questionnaire (Apr. 20, 2021) at 7–8, CR 66, PR 193, CJA Tab 14.

DJAC responded that the difference amounted to the difference between the quantity of bituminous coal consumed in the production of merchandise under consideration and "total consumption quantity of bituminous coal during the POR, irrespective of the end-product." DJAC Suppl. SDQR at 11. In other words, some of the bituminous coal DJAC consumed during the POR was consumed in the production of non-subject merchandise. *See id.* Specifically, DJAC explained that the difference could be accounted for by (1) self-produced normal-ash carbonized material DJAC sold during the POR; (2) the closing inventory of self-produced normal-ash carbonized material during the POR; (3) the opening balance amount of self-produced low-ash carbonized material; and (4) the quantity of Screenings 2 produced. *Id*. at 11–12. DJAC provided an equation (essentially, the sum of items 1, 2, and 4, less item 3) showing that the quantity of bituminous coal attributed to the four categories of materials listed above was equal to the difference between the total consumption of bituminous coal, irrespective of end-product, and the total quantity of bituminous coal used in the production of merchandise under consideration. *See id*. Calgon, however, argued that DJAC incorrectly subtracted the closing POR inventory of normal-ash carbonized material from the calculation of standard consumption of bituminous coal, and incorrectly added the opening balance of low-ash carbonized material. *See* Pet'rs' Cmts. on Continuing Deficiencies in DJAC's Resp. to the Dep't's Suppl. Section D Questionnaire (June 4, 2021) at 9–12, CR 181, PR 266, CJA Tab 19.

For the *Preliminary Results*, Commerce accepted DJAC's explanation, made no adjustments to DJAC's reporting of bituminous coal, and did not address Calgon's arguments that DJAC's reporting was incorrect. *See generally* Prelim. Mem.; Prelim. Results Margin Calculation for [DJAC] (June 18, 2021), CR 194, PR 276, CJA Tab 22. Commerce did, however, issue a second supplemental cost questionnaire to DJAC prior to issuance of the *Final Results* in which the agency requested that DJAC "revise [its] calculation of the standard bituminous coal consumption during the POR such that it excludes the opening POR inventory balance of . . . low-ash carbonized material and includes the closing POR inventory balance of . . . normal-ash carbonized material." *See* Section C Third Suppl. Questionnaire, and Section D Second Suppl. Questionnaire (July 19, 2021) ("2nd Suppl. SDQR") at 6–7, CR 200, PR 283, CJA Tab 25. In response, DJAC explained its position that no adjustment to its calculation method-

ology was necessary. *See* DJAC 3rd Suppl. Sec. C and 2nd Suppl. Sec. D. Resp. (Aug. 11, 2021) ("DJAC 2nd Suppl. SDQR") at 11, PR 291, CR 206–212, CJA Tab 27.

For the *Final Results*, Commerce accepted DJAC's reporting of bituminous coal consumption, despite DJAC not making any change to its treatment of opening and closing inventories as a result of the agency's July 19 supplemental questionnaire. *See* I&D Mem. at 9–11. Commerce concluded that DJAC's calculation methodology properly accounted for opening and closing inventories of low-ash and normal-ash carbonized materials. *See id*. at 10–11.

b. Parties' Contentions

Calgon contends that Commerce misunderstood DJAC's calculation of its bituminous coal consumption. Calgon's Rule 56.2 Mem. at 24–28; Calgon's Reply at 7–11. Specifically, Calgon alleges that, contrary to Commerce's instructions, DJAC's calculation did not exclude its opening inventory of bituminous coal from its consumption calculation of bituminous coal. *See* Calgon's Rule 56.2 Mem. at 26–27; Calgon's Reply at 8–11. Calgon further contends that this misunderstanding "renders the agency's findings inconsistent with the approach relied on by [the agency] in [AR12]," in which Commerce excluded the opening inventory balance of carbonized material from DJAC's bituminous coal consumption calculation. Calgon's Rule 56.2 Mem. at 28–30.

The Government and DJAC contend that DJAC's reporting of its bituminous coal consumption was consistent with the prior review and that Commerce's reliance on DJAC's reporting is supported by substantial evidence. Def.'s Resp. at 45–46; DJAC's Resp. at 12–23.

c. Analysis

DJAC reported both the total consumption of bituminous coal used in the production of merchandise under consideration and the total consumption of bituminous coal irrespective of end-product. *See* DJAC SDQR, Ex. D-6; DJAC Suppl. SDQR at 11; DJAC 2nd Suppl. SDQR, Ex. 2SD-Q13 at Ex. D-6.2.1–6.2.2. Because these quantities did not match, Commerce asked DJAC to reconcile the difference. *See* DJAC Suppl. SDQR at 11. DJAC provided a narrative explanation for the difference between these totals as well as detailed calculations supporting its explanation. *See id.* at 11–12. The Government and DJAC contend that Commerce's acceptance of DJAC's reported consumption of bituminous coal is supported by substantial evidence, while Calgon contends that, because Commerce misunderstood DJAC's calculations, the *Final Results* must be remanded.

The court has reviewed the record information and Calgon's claim and finds that Commerce's acceptance of DJAC's consumption of bituminous coal is supported by substantial evidence. The crux of Calgon's contention is that, in reporting its total bituminous coal consumption, DJAC should have excluded the opening inventory of self-produced carbonized material and included the closing inventory of self-produced carbonized materials.[17] *See* Calgon's Rule 56.2 Mem. at 26–27. Calgon's argument is without merit. Calgon asserts that the difference between the two consumption figures "is a negative number," such that DJAC in fact "subtracted closing inventory" and "added opening inventory." *Id.* at 27 (emphasis omitted). DJAC's treatment of each adjustment demonstrates that DJAC properly excluded its opening inventory and included its closing inventory in order to reconcile the difference between the two bituminous coal consumption figures. *See* DJAC Suppl. SDQR at 12.[18]

The court's review of the record indicates that DJAC's treatment of opening and closing inventories of carbonized materials aligns with DJAC's explanation of its calculations, Commerce's understanding of the calculations, *and* the calculation method that Calgon contends should have been followed. In particular, the difference between DJAC's total consumption of bituminous coal during the period of review and its consumption of bituminous coal used to produce merchandise under consideration is fully accounted for by DJAC's production of non-subject merchandise and the difference between the starting and ending inventories of what might be considered work-in-process. Calgon fails to point to any record evidence to the contrary, nor do they provide any explanation as to how DJAC's calculations were incorrect or failed to reconcile fully its consumption of bituminous coal during the POR. Accordingly, Commerce's determination with respect to this issue will be sustained.

CONCLUSION

For the foregoing reasons, the court will sustain Commerce's *Final Results*. Judgment will enter accordingly.

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[17] Calgon argues that DJAC's calculations in this review are inconsistent with its calculations in AR 12. *See* Calgon's Rule 56.2 Mem. at 28–30; Calgon's Reply at 7–11. However, Calgon did not provide any record evidence demonstrating that DJAC's calculations in AR13 are different than the calculations made in AR12, and the calculations made in AR12 are not part of the record of the *Final Results* before the court.

[18] As DJAC explained, the difference between the two consumption figures was equal to the sum of its self-produced normal-ash carbonized materials, the closing inventory of self-produced normal ash carbonized material, and Screenings 2, *minus* the opening balance of self-produced low-ash carbonized materials. *See* DJAC Suppl. SDQR at 12. Furthermore, the exhibit to DJAC's initial section D questionnaire response illustrates that DJAC appropriately accounted for its opening and closing inventories of self-produced carbonized materials in its calculations. *See* DJAC SDQR, Ex. D-12.6.

Dated: July 21, 2023
New York, New York

/s/ Mark A. Barnett
MARK A. BARNETT, CHIEF JUDGE

Slip Op. 23–110

ELLWOOD CITY FORGE CO., ELLWOOD NATIONAL STEEL CO., ELLWOOD QUALITY STEELS CO., AND A. FINKL & SONS, Plaintiffs/Defendant-Intervenors, v. UNITED STATES, Defendant, and BGH EDELSTAHL SIEGEN GMBH, Defendant-Intervenor/Plaintiff.

Before: Stephen Alexander Vaden, Judge
Consol. Court No. 1:21–00077

[Granting Commerce's request for a voluntary remand and remanding for further explanation.]

Dated: July 24, 2023

Myles S. Getlan, Cassidy Levy Kent LLP, of Washington, DC, for Plaintiffs. With him on the brief were *Jack A. Levy*, *Thomas M. Beline*, *James E. Ransdell, IV*, and *Nicole Brunda*.

Sarah E. Kramer, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for Defendant United States. With her on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, Commercial Litigation Branch, *Franklin E. White, Jr.*, Assistant Director, and *Alexander Fried*, Office of Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce.

Marc E. Montalbine, deKieffer & Horgan, PLLC, of Washington, DC, for Defendant-Intervenor. With him on the brief were *Gregory S. Menegaz*, *Alexandra H. Salzman*, and *Merisa A. Horgan*.

OPINION

Vaden, Judge:

Before the Court is the U.S. Department of Commerce's (Commerce) Remand Redetermination in the antidumping investigation of forged steel fluid end blocks from Germany. *See Forged Steel Fluid End Blocks from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value* (Final Determination), 85 Fed. Reg. 80,018 (Dec. 11, 2020). Ellwood City Forge Company, Ellwood National Steel Company, Ellwood Quality Steels Company, and A. Finkl & Sons (collectively "Ellwood City" and "Plaintiffs") argue that Commerce failed to explain why it refused to consider alternative pathways to make a particular market situation adjustment, meaning substantial evidence does not support its decision. Pls' Comments at 7–17, ECF No. 62. Meanwhile, Commerce has requested a voluntary remand to address alleged errors in its calculation of the antidumping margin. Def.'s Resp. at 4, ECF No. 65. Defendant-Intervenor BGH Edelstahl Siegen GmbH (BGH), a German producer of fluid end blocks and mandatory respondent in this investigation objects that administrative exhaustion bars Commerce's request for a voluntary

remand. *See* Def.-Int.'s Resp. at 1–6, ECF No. 66. For the reasons set forth below, Commerce's request for a voluntary remand is **GRANTED**; and the case is also **REMANDED** to Commerce for further explanation of its refusal to address Plaintiffs' arguments regarding alternative pathways for a particular market situation adjustment.

BACKGROUND

The Court presumes familiarity with the facts of this case as set out in its previous opinion and now recounts those facts relevant to the review of the Remand Redetermination. *See Ellwood City Forge Co. v. United States*, 600 F. Supp. 3d 1281 (CIT 2022). The investigation at issue began on December 18, 2019, when Plaintiffs filed a petition with Commerce alleging that German producers were selling fluid end blocks at less than fair market value in the United States. *Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, and Italy: Initiation of Less-Than-Fair-Value Investigations*, 85 Fed. Reg. 2,394 (Jan. 15, 2020). On December 8, 2020, Commerce issued its Final Issues and Decision Memorandum (IDM), explaining its decision to assign a dumping margin of 3.82% to BGH. J.A. at 83,987, ECF No. 42. Commerce published the Final Determination on December 11, 2020. Final Determination, 85 Fed. Reg. 80,018.

Ellwood City sued Commerce in February 2021, challenging the final determination regarding BGH. Compl. ¶¶ 23–39, ECF No. 6. BGH moved to intervene as Defendant-Intervenor on March 29, 2021. Consent Mot. Intervene, ECF No. 10. On May 6, 2021, the parties moved to consolidate with companion case 21–00079, in which BGH as Plaintiff challenges elements of the same determination. ECF No. 17. The Court granted that Motion on May 7, 2021, designating the present case as the lead consolidated case. Order Granting Mot. to Consolidate Cases, ECF No. 18. Ellwood City asked this Court to reverse Commerce's final determination on the bases that (1) Commerce's failure to conduct on-site verification was contrary to law and (2) Commerce's overall determination is unsupported by substantial evidence and contrary to law because it relied on unreconciled cost data. Mot. for J. on Agency R. at 13–36, ECF No. 25. BGH similarly asked this Court to remand Commerce's final determination but on the bases that (1) Commerce erred in making particular market situation adjustments to BGH's reported costs and (2) Commerce erred in its application of differential pricing methodology. BGH's Mot. J. on Agency R. at 3–22, ECF No. 23. Commerce filed its response on December 17, 2021, and did not oppose a remand on BGH's particular market situation claim. Resp. Br. at 29, ECF No. 37.

Ellwood City and BGH filed reply briefs on January 18, 2022. Ellwood City's Reply Br., ECF No. 40; BGH's Reply Br., ECF No. 38.

The Court held oral argument on April 25, 2022. ECF No. 52. The resulting opinion held that Elwood City had forfeited its verification claim and that Commerce did not err in its pricing methodology while also remanding the case back to Commerce to remove the particular market situation adjustment in accordance with the Federal Circuit's decision in *Hyundai Steel Co. v. United States*, 19 F.4th 1346, 1352 (Fed. Cir. 2021). *See Ellwood City Forge*, 600 F. Supp. 3d at 1292. In *Hyundai Steel*, the Federal Circuit confirmed the consistent position of the Court of International Trade and held that applying a particular market situation adjustment to the calculation of the cost of production under 19 U.S.C. § 1677b(b) for sales below cost is illegal. 19 F.4th at 1352. This Court therefore "remand[ed] this issue to allow Commerce to recalculate the dumping margin without impermissible cost-based particular market situation adjustments." *Ellwood City*, 600 F. Supp. 3d at 1303.

Commerce filed its Remand Redetermination with the Court on March 14, 2023. ECF No. 59. The agency removed the particular market situation adjustment to BGH's antidumping margin, and BGH received a new antidumping margin of zero. Remand Redetermination at 4, ECF No. 59. In response to comments proffered by Ellwood City arguing that Commerce improperly ignored alternative avenues to make a particular market situation adjustment to BGH's production costs, Commerce replied "that this remand redetermination is not the appropriate proceeding in which Commerce should address, for the first time, alternative possible interpretations of the CAFC's analysis in *Hyundai Steel*." *Id.* at 6. Ellwood City filed comments opposing the Remand Redetermination, arguing that Commerce's revision to the margin calculation contained an error that distorted BGH's dumping margin and that the agency unlawfully refused to consider alternative pathways to adjust BGH's production costs. Pls.' Comments at 2–17, ECF No. 62. Commerce filed a response requesting a voluntary remand to review the alleged calculation error and arguing that it was barred from considering the alternative pathways on remand. Def.'s Resp. at 4–8, ECF No. 65. BGH also replied to Plaintiffs' comments, opposing Commerce's request for a voluntary remand and arguing that administrative exhaustion barred the agency from considering Plaintiffs' proposed alternative pathways. Def.-Int.'s Resp. at 1–6, ECF No. 66. Seeking an opportunity to respond to these arguments, Ellwood City filed a Motion for Leave to File a Reply with the proposed reply attached. *See* ECF No. 68. In that reply, Plaintiffs argued that exhaustion did not apply

because the Federal Circuit's *Hyundai Steel* decision was not issued until after the initiation of the present litigation. *See* Pls.' Reply at 2–5. The Court granted the Motion. ECF No. 75. The issues are fully briefed, and the case is now ripe for adjudication.

JURISDICTION AND STANDARD OF REVIEW

This Court has exclusive jurisdiction over Ellwood City and BGH's challenge to Commerce's Remand Redetermination under 19 U.S.C. § 1516a(a)(2)(B)(i) and 28 U.S.C. § 1581(c), which grant the Court authority to review actions contesting final affirmative determinations, including any negative part of such determinations, in an antidumping order. The Court will sustain Commerce's remand results unless they are "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). "[T]he question is not whether the Court would have reached the same decision on the same record[;] rather, it is whether the administrative record as a whole permits Commerce's conclusion." *New Am. Keg v. United States*, No. 20–00008, 2021 WL 1206153, at *6 (CIT Mar. 23, 2021). Additionally, "[t]he results of a redetermination pursuant to court remand are also reviewed 'for compliance with the court's remand order.'" *Xinjiamei Furniture (Zhangzhou) Co. v. United States*, 968 F. Supp. 2d 1255, 1259 (CIT 2014) (quoting *Nakornthai Mill Pub. Co. v. United States*, 587 F. Supp. 2d 1303, 1306 (CIT 2008)).

DISCUSSION

I. Summary

The Remand Redetermination presents two distinct issues: (1) Commerce's request for a voluntary remand to reconsider its calculation of the variable cost difference and (2) Commerce's refusal to address Plaintiffs' proposed alternatives to the withdrawn particular market situation adjustment. *See* Pls.' Comments at 2–17, ECF No. 62; Def.'s Resp. at 4–8, ECF No. 65. Both are easily dispatched. First, Commerce's remand request raises "substantial and legitimate" concerns about the accuracy of the antidumping margin so that remand is proper. *SKF USA Inc. v. United States*, 254 F.3d 1022, 1029 (Fed. Cir. 2001). BGH's objection that Ellwood City failed to administratively exhaust the calculation issue misconstrues the purposes of exhaustion. *See* Def.-Int.'s Resp. at 2, ECF No. 66. Exhaustion serves to ensure that an agency has an opportunity to address an objection or issue at the time of its decision instead of when it is "haled into federal court." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). This concern is obviated when *the agency* requests a remand.

Second, when Commerce refused to address Plaintiffs' proposed alternatives in its Remand Redetermination, the agency failed to articulate a clear rationale for its decision. Its explanation could be interpreted in at least three different ways: (1) the remand order prohibited the agency from considering the alternatives; (2) administrative exhaustion bars it from considering them; or (3) it would be improper to consider Ellwood City's alternatives because it would require the agency to reopen the record. *See* Remand Redetermination at 6, ECF No. 59 ("[W]e determine that this remand redetermination is not the appropriate proceeding in which Commerce should address, for the first time, alternative possible interpretations[.]"). The first rationale is erroneous because the remand order was silent on this point. *See Ellwood City*, 600 F. Supp. 3d at 1303. The second and third rationales may have merit. However, the Court cannot sustain agency action when the path of the agency's reasoning is not discernible. *See Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974). Accordingly, Commerce's request for a voluntary remand is **GRANTED**. The case is also **REMANDED** for Commerce to further explain why it refused to address Plaintiffs' proposed alternatives.

II. Commerce's Request for a Voluntary Remand

Plaintiffs argue that Commerce's calculation of BGH's dumping margin contained a significant error. Pl.'s Comments at 2–4, ECF No. 62. They allege that Commerce erred in its calculation of the variable cost difference, which "is a filtering mechanism to determine whether a given . . . product sold in the U.S. market can reasonably be compared with the closest, non-identical . . . product sold in the home market." *Id.* at 2. This filtering mechanism is vital to establishing an accurate dumping margin in cases where there is no identical product sold in both the U.S. market and the home market. In such cases, the equation ensures an apples-to-apples comparison by filtering out products whose costs are too dissimilar for an accurate price comparison. Such products are filtered out when the difference in the "variable costs of merchandise sold in home and U.S. markets . . . exceeds 20% of the average total cost of the U.S. model[.]" *Id.* Plaintiffs allege that, when Commerce removed the particular market situation adjustment, it failed to remove the adjustment from the denominator of the variable cost difference equation. *Id.* at 4. This mistake distorted the calculation and consequently the dumping margin by allowing non apples-to-apples comparisons between products in the home and U.S. markets. *See id.* Although Commerce does not concede that it made an error in its calculations, it has requested a voluntary remand to "reconsider its calculation in light of plaintiffs' argument

that Commerce made errors in the margin program." Def.'s Resp. at 5, ECF No. 65. BGH opposes this request, alleging that it is barred by the doctrine of administrative exhaustion. Def.-Int.'s Resp. at 2, ECF No. 66 ("Despite this obvious error in Commerce's calculations, Plaintiffs chose not to make any comments on Commerce's calculations."). Because Commerce's concerns are "substantial and legitimate," it is appropriate for the Court to grant a remand. *SKF*, 254 F.3d at 1029.

Under Federal Circuit precedent, an agency "may request a remand (without confessing error) in order to reconsider its previous position." *Id.* In such circumstances, "if the agency's concern is substantial and legitimate, a remand is usually appropriate." *Id.*; *see also Ethyl Corp. v. Browner*, 989 F.2d 522, 524 (D.C. Cir. 1993) ("We commonly grant such motions [for voluntary remand], preferring to allow agencies to cure their own mistakes rather than wasting the courts' and the parties' resources reviewing a record that both sides acknowledge to be incorrect or incomplete."). The Court has discretion to deny the request "if the agency's request is frivolous or in bad faith." *SKF*, 254 F.3d at 1029.

An agency's concerns are substantial and legitimate when "(1) Commerce supports its request with a compelling justification, (2) the need for finality does not outweigh the justification, and (3) the scope of the request is appropriate." *Baroque Timber Indus. (Zhongshan) Co. v. United States*, 37 CIT 1123, 1127 (2013) (citation omitted). Commerce's concerns here are substantial and legitimate because "an overriding purpose of Commerce's administration of antidumping laws is to calculate dumping margins as accurately as possible[.]" *Parkdale Int'l v. United States*, 475 F.3d 1375, 1380 (Fed. Cir. 2007). The alleged error, which BGH does not contest, would affect the accuracy of the dumping margin. *See* Def.-Int.'s Resp. at 2, ECF No. 66 (calling the error "obvious"). As such, "[i]n the context of a routine appeal of a final determination, the need to accurately calculate margins is not outweighed by the interest in finality." *Baroque Timber*, 37 CIT at 1127 (citation omitted). Commerce's remand request in this case is appropriate and limited to the "narrow issue" of the alleged errors in the variable cost difference calculation. Def.'s Resp. at 5, ECF No. 65.

BGH objects that a remand is improper because of Ellwood City's failure to exhaust its administrative remedies; namely, that it failed to raise the alleged error during the remand proceedings. *See* Def.-Int.'s Resp. at 2, ECF No. 66. This objection turns the purpose of the exhaustion doctrine on its head. "Exhaustion is required because it serves the twin purposes of protecting administrative agency author-

ity and promoting judicial efficiency." *McCarthy*, 503 U.S. at 145. "[D]eference to Congress' delegation of authority" means that "agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer." *Id*. The doctrine ensures "that an agency [has] an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court." *Id.* In this case, *the agency* is requesting a remand to address the alleged errors, obviating any concern that failure to exhaust has "deprived the agency of the opportunity to consider these arguments in the first instance." *Carpenter Tech. Corp. v. United States*, 30 CIT 1595, 1598 (2006); *see also Baroque Timber*, 37 CIT at 1129 (holding that exhaustion does not bar Commerce's request for a voluntary remand). Instead, a voluntary remand gives the agency "an opportunity to correct its own mistakes[.]" *McCarthy*, 503 U.S. at 145. Because Commerce has requested a voluntary remand to address a substantial and legitimate concern, administrative exhaustion does not apply. The Court **REMANDS** the case back to Commerce to reconsider its calculation.

III. Particular Market Situation Adjustment

Following the Court's remand, Commerce removed the particular market situation adjustment that it had previously made to BGH's dumping margin. Remand Redetermination at 4, ECF No. 59. The agency also declined to address Ellwood City's proposed alternative methods of adjusting BGH's costs because the remand was not "the appropriate proceeding" to address the issue "for the first time[.]" *Id.* at 6. Plaintiffs do not challenge Commerce's removal of the initial adjustment but instead challenge Commerce's refusal to address their proposed "alternative statutory pathways whereby Commerce could make corrective adjustments during remand." Pls.' Comments at 7, ECF No. 62. Ellwood City argues that Commerce should have accounted for distortions in BGH's cost data in calculating BGH's antidumping margin. *Id.* at 9 ("Moreover, insofar as the Court declined to disturb Commerce's underlying PMS distortion finding . . . it was illogical for Commerce to assume the Court expected Commerce to abdicate its responsibility to administer the antidumping laws and do no more than calculate a price-to-price margin using distorted cost data."). In its brief before the Court, the Government responds that, because the original particular market situation adjustment was not based on the new statutory pathways suggested by Plaintiffs, it is barred from considering them now. Def.'s Resp. at 5, ECF No. 65 ("At no point leading up to Commerce's determination were these 'alternatives' raised and thus, at no point did Commerce discuss them."). BGH agrees that Commerce was not required to address these alter-

natives because "Plaintiffs failed to raise any of their 'alternative statutory routes' during the original investigation." Def.-Int.'s Resp. at 4, ECF No. 66 (quoting Def.'s Resp. at 6, ECF No. 65). What Commerce actually wrote in its Remand Redetermination was not nearly so exact.

The Court can only affirm Commerce's decisions "on the basis articulated by the agency itself." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983). If "the agency's path may [not] be reasonably discerned," then the Court cannot uphold an agency determination. *Bowman Transp.*, 419 U.S. at 286. That is the case here. Commerce's explanation of why it refused to address the Plaintiffs' proposed alternatives consisted of a single paragraph:

> The Court granted a remand, which Commerce did not oppose, specifically to "recalculate the dumping margin without impermissible cost-based particular market situation adjustments for BGH's electricity and ferrochrome inputs." Importantly, the Court remanded this case "on narrow grounds" so that Commerce may reconsider its finding of a PMS. While the Coalition contends that Commerce may rely on other avenues to support making a cost-based PMS adjustment in accordance with the CAFC's decision in *Hyundai Steel*, in line with Commerce's remand request and the Court's *Remand Order*, we determine that this remand redetermination is not the appropriate proceeding in which Commerce should address, for the first time, alternative possible interpretations of the CAFC's analysis in *Hyundai Steel*. Accordingly, we have declined to consider the Coalition's arguments in the context of these final results of redetermination.

Remand Redetermination at 6, ECF No. 59. This paragraph is amenable to at least three different interpretations: (1) Commerce believed that the remand order prohibited it from addressing Plaintiffs' arguments; (2) Commerce believed that Plaintiffs had forfeited their arguments because they never raised them in the original investigation; or (3) Commerce believed that it would be inappropriate to consider the arguments because it would require the agency to reopen the record. Consequently, the path of the agency's reasoning "may [not] be reasonably discerned." *Bowman Transp.*, 419 U.S. at 286.

The first rationale is erroneous: The remand order did not bar Commerce from considering Plaintiffs' arguments. *See Ellwood City*, 600 F. Supp. 3d at 1303 (nowhere discussing alternative pathways).

The second interpretation — proffered by Commerce in its brief to the Court — may have merit, but Commerce failed to articulate it in its actual decision. *See Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 50 (limiting courts to review of the "basis articulated by the agency itself"). The Government and BGH contend in their briefs that Ellwood City never raised these alternative statutory pathways to make a particular market situation adjustment before the agency in the original investigation. *See* Def.'s Resp. at 5, ECF No. 65; Def.-Int.'s Resp. at 4, ECF No. 66. Ellwood City does not dispute this. Instead, it objects that it could not have known to brief these alternatives because the Federal Circuit had not yet issued its decision in *Hyundai Steel*. *See* Pls.' Reply at 3, ECF No. 68 ("Plaintiffs had no opportunity to argue the implications of that decision administratively, and Commerce cannot refuse to consider arguments on remand that Plaintiffs had no cause to raise before this litigation.").

This is a creative argument given that Ellwood City *was* on notice that its litigation position before the agency had been rejected by this Court. *See* Petitioners' Rebuttal Brief at 34, Barcode: 4055223–01 A-428–847 (stating that "the CIT's apparently restrictive interpretation does not govern this [administrative] proceeding"). Before the Federal Circuit's decision in *Hyundai Steel* and before Commerce's final determination in this matter, the Court of International Trade had rejected Plaintiffs' legal theory at least seven times. *See, e.g.*, *Hyundai Steel Co. v. United States*, 483 F. Supp. 3d 1273, 1279 (2020); *Saha Thai Steel Pipe Pub. Co. v. United States*, 422 F. Supp. 3d 1363, 1368–70 (2019); *Husteel Co. v. United States*, 426 F. Supp. 3d 1376, 1383–89 (2020); *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 426 F. Supp. 3d 1395, 1411–12 (2020); *Dong-A Steel Co. v. United States*, 475 F. Supp. 3d 1317, 1337–41 (2020); *Husteel Co. 6 v. United States*, 476 F. Supp. 3d 1363, 1370–73 (2020); *Saha Thai Steel Pipe Pub. Co. v. United States*, 476 F. Supp. 3d 1378, 1382–86 (2020). One respondent even flagged the legal infirmity of Plaintiffs' position in comments submitted to Commerce in the underlying investigation. *See* IDM at 15–16, J.A. at 84,001–02, ECF No. 44. No federal judge ever accepted Ellwood City's proffered argument justifying its request for a particular market situation adjustment. Ellwood City nonetheless proceeded before Commerce without making any alternative arguments. *Cf.* Petitioners' Rebuttal Brief at 33–34, Barcode: 4055223–01 A-428–847 (acknowledging that "the issue of whether Commerce can apply a PMS adjustment to cost in making sales below cost calculations remains live and is currently pending before the U.S. Court of Appeals for the Federal Circuit").

None of the above is mentioned by Commerce in its Remand Redetermination. Therefore, the Court may not presume Commerce declined to addresses Plaintiffs' newly proffered pathways because Ellwood City made a strategic litigation decision to base its case on a legal argument no federal court ever accepted. Nor is there any information regarding the third possible interpretation of its paragraph explanation. Commerce is silent on whether it believes it has sufficient information on the record before it to make an alternative calculation. Commerce thus has not adequately explained its rationale for rejecting Plaintiffs' request that it consider alternative pathways to a particular market situation adjustment. Because the Court may not make the decision for Commerce, it will be the agency's task on remand to consider the arguments made and state a fulsome rationale for either considering or not considering Plaintiffs' alternative pathways. *See Bonney Forge Corp. v. United States*, 560 F. Supp. 3d 1303, 1312 (CIT 2022) ("The Court reviews answers Commerce actually gave for substantial evidentiary support. It does not draft answers Commerce never gave from the available record information before the Department.") (internal citation omitted).

CONCLUSION

This case must return to the agency for further consideration. Commerce's request for a voluntary remand to examine the alleged error in its variable cost difference calculation is **GRANTED**. The agency must also provide an adequate explanation for its decision on Plaintiffs' request that it employ alternative pathways to a particular market situation adjustment. Consequently, the case is **REMANDED** to Commerce.

On consideration of all papers and proceedings held in relation to this matter, and on due deliberation, it is hereby:

ORDERED that Commerce's determination is remanded for reconsideration of its variable cost difference calculation; and

ORDERED that Commerce provide an adequate explanation for its decision on Ellwood City's request to consider alternative pathways to a particular market situation adjustment; and it is further

ORDERED that Commerce shall file its Second Remand Redetermination with the Court within 120 days of today's date; and it is further

ORDERED that Defendant shall supplement the administrative record with all documents considered by Commerce in reaching its decision in the Second Remand Redetermination; and it is further

ORDERED that Plaintiffs shall have 30 days from the filing of the Second Remand Redetermination to submit comments to the Court; and

ORDERED that Defendant shall have 15 days from the date of Plaintiffs' filing of comments to submit a response; and

ORDERED that Defendant-Intervenor shall have 15 days from the date of Defendant's filing of comments to submit a response.

SO ORDERED.

Dated: July 24, 2023
New York, New York

/*s*/ *Stephen Alexander Vaden*
STEPHEN ALEXANDER VADEN, JUDGE

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