U.S. Customs and Border Protection

PROPOSED REVOCATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN DIMMERS

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

ACTION: Notice of proposed revocation of two ruling letters, and proposed revocation of treatment relating to the tariff classification of certain dimmers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning tariff classification of dimmers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before July 25, 2025.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon L. Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon L. Stillwell at (202) 325–0739.

FOR FURTHER INFORMATION CONTACT: Michael F. Thompson, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–1917.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of certain dimmers. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N250956, dated March 12, 2014 (Attachment A) and NY N250985, dated March 17, 2014 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N250956 and NY N250985, CBP classified two models of certain dimmers in heading 8526, HTSUS, specifically in subheading 8526.92.50, HTSUS, which provides for "Radar apparatus, radio navigational aid apparatus and radio remote control apparatus: Other: Radio remote control apparatus: Other." CBP has reviewed NY N250956 and NY N250985 and has determined the ruling letters to be in error. It is now CBP's position that certain dimmers are properly classified, in heading 8537, HTSUS, specifically in subheading 8537.10.91, HTSUS, which provides for "Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: For a voltage not exceeding 1,000 V: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N250956 and NY N250985 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H257143, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

N250956

March 12, 2014
CLA-2–85:OT:RR:NC:N1:108
CATEGORY: Classification
TARIFF NO.: 8526.92.5000

MR. DAVID FRESTON
CONTROL4
11734 SOUTH ELECTION ROAD
SALT LAKE CITY, UT 84020

RE: The tariff classification of a wireless adaptive phase dimmer from China

DEAR MR. FRESTON:

In your letter dated February 18, 2014, you requested a tariff classification ruling. The submitted sample is being returned.

The merchandise under consideration is referred to as the "Wireless Adaptive Phase Dimmer," model C4-APD120, which is part of the ZigBee home system. This device wirelessly controls other devices through radio frequency. The buttons on this device can activate the operations of other devices controlled by the automation system, such as adjusting light levels in other rooms, turning on music, and locking the doors. In addition, this device has a subsidiary function of controlling the attached lighting load via phase-cut dimming over the line-voltage wires. Thus, it is the opinion of this office that the radio remote control function is the principal function of this device.

In your request, you suggested classification in subheading 8543.90.8880, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Electrical machines and apparatus...: Parts: Other: Other: Other. However, this radio remote control apparatus is more specifically provided for elsewhere in the tariff.

The applicable subheading for this wireless adaptive phase dimmer will be 8526.92.5000, HTSUS, which provides for Radar apparatus, radio navigational aid apparatus and radio remote control apparatus: Other: Radio remote control apparatus: Other. The rate of duty will be 4.9 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lisa Cariello at (646) 733–3014.

Sincerely,

GWENN KLEIN KIRSCHNER
Acting Director
National Commodity Specialist Division

N250985
March 17, 2014
CLA-2–85:OT:RR:NC:N1:108
CATEGORY: Classification
TARIFF NO.: 8526.92.5000

MR. DAVID FRESTON
CONTROL4
11734 SOUTH ELECTION ROAD, STE. 200
SALT LAKE CITY, UT 84020

RE: The tariff classification of a wireless remote control dimmer from China

DEAR MR. FRESTON:

In your letter dated February 18, 2014, you requested a tariff classification ruling. The submitted sample is being returned.

The merchandise under consideration is referred to as the "Control4 120V Wireless Dimmer," model C4-DIM1-Z, which is part of the ZigBee home system. This device wirelessly controls other devices through radio frequency. This device can activate the operations of other devices controlled by the automation system, such as adjusting light levels, turning on music, and locking the doors. In addition, this device has a subsidiary function of controlling the attached lighting load via phase-cut dimming over the line-voltage wires. Thus, it is the opinion of this office that the radio remote control function is the principal function of this device.

In your request, you suggested classification in subheading 8543.90.8880, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Electrical machines and apparatus...: Parts: Other: Other: Other. However, this radio remote control apparatus is more specifically provided for elsewhere in the tariff.

The applicable subheading for this merchandise will be 8526.92.5000, HTSUS, which provides for Radar apparatus, radio navigational aid apparatus and radio remote control apparatus: Other: Radio remote control apparatus: Other. The rate of duty will be 4.9 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lisa Cariello at (646) 733–3014.

Sincerely,

GWENN KLEIN KIRSCHNER
Acting Director
National Commodity Specialist Division

HQ H257143
OT:RR:CTF:EMAIN H257143 MFT
CATEGORY: Classification
TARIFF NO.: 8537.10.91

MR. CHRIS MORTORFF
GENERAL COUNSEL, ADI GLOBAL DISTRIBUTION
275 BROADHOLLOW RD., SUITE 400
MELVILLE, NY 11747

RE: Revocation of New York Ruling Letter (NY) N250956 and NY N250985; Classification of Dimmers

DEAR MR. MORTORFF:

This letter is in response to a request received July 29, 2014, in which you seek reconsideration of New York Ruling Letter (NY) N250956 (dated March 12, 2014) and NY N250985 (dated March 17, 2014), wherein U.S. Customs and Border Protection (CBP) classified two models of certain dimmers under heading 8526 of the Harmonized Tariff Schedule of the United States (HTSUS). Following the issuance of NY N250956 and NY N250985, you informed CBP that certain information you submitted that was material to our disposition of those ruling letters was inaccurate, and you provided clarifying facts. Upon further examination of both matters, we revoke NY N250956 and NY N250985 as discussed below.

FACTS:

NY N250956 described the first dimmer model as follows:

> The merchandise under consideration is referred to as the 'Wireless Adaptive Phase Dimmer,' model C4-APD120, which is part of the ZigBee home system. This device wirelessly controls other devices through radio frequency. The buttons on this device can activate the operations of other devices controlled by the automation system, such as adjusting light levels in other rooms, turning on music, and locking the doors. In addition, this device has a subsidiary function of controlling the attached lighting load via phase-cut dimming over the line-voltage wires. Thus, it is the opinion of this office that the radio remote control function is the principal function of this device.

NY N250985 described the second dimmer model in similar terms:

> The merchandise under consideration is referred to as the 'Control4 120V Wireless Dimmer,' model C4-DIM1-Z, which is part of the ZigBee home system. This device wirelessly controls other devices through radio frequency. This device can activate the operations of other devices controlled by the automation system, such as adjusting light levels, turning on music, and locking the doors. In addition, this device has a subsidiary function of controlling the attached lighting load via phase-cut dimming over the line-voltage wires. Thus, it is the opinion of this office that the radio remote control function is the principal function of this device.

Both rulings classified their respective dimmer models under heading 8526, HTSUS, specifically, subheading 8526.92.50, HTSUS, which provides for, "Radar apparatus, radio navigational aid apparatus and radio remote control apparatus: Other: Radio remote control apparatus: Other."

In reaching the determinations in NY N250956 and NY N250985, CBP specifically relied on the explanations you provided in response to agency

inquiries where you indicated that both models featured *additional*, discrete radio remote control functions for wirelessly controlling other devices. However, following the issuance of NY N250956 and NY N250985, you informed CBP that the subject dimmers do *not* control other devices through radio frequency (RF). Further examination of the product samples, diagrams, and your materials provided at the time of the original ruling request confirms that the dimmers do not directly use RF to control other devices. Rather, the subject dimmers each receive RF signals from a separately presented controller and, based on those signals, electrically control a lighting circuit via wires connected to the dimmer switch outputs. The submitted facts also demonstrate that the dimmers incorporate a printed circuit board assembly (PCBA) and several relays to open, close, and protect the electrical circuit. Moreover, both of the specific dimmer models at issue operate at loads not exceeding 1,000 VAC.

ISSUE:

Whether the subject dimmers are classified under heading 8526, HTSUS, which provides for "radio remote control apparatus," or heading 8537, HTSUS, as "[b]oards [. . .] equipped with two or more apparatus of heading [. . .] 8536, for electric control or the distribution of electricity."

LAW AND ANALYSIS:

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

The 2025 HTSUS headings under consideration are as follows:

8526 Radar apparatus, radio navigational aid apparatus and radio remote control apparatus:

* * * * *

8537 Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517:

Given your clarification and our review of the product samples, diagrams, and your submission, we find that the subject merchandise is not a "radio remote control apparatus" of heading 8526, HTSUS. While the dimmers may receive radio signals, the control of the lighting circuit is achieved through electrical connections, not RF. As such, heading 8526, HTSUS, is inapplicable. We instead find that the subject merchandise meets the terms of heading 8537, HTSUS. The dimmers each incorporate a PCBA (i.e., a "board"). These boards are equipped with multiple switches to open, close, and protect electrical circuits, and such switches would meet the terms of

heading 8536, HTSUS. Finally, the boards are designed for *electrically controlling* the lighting circuit, a purpose clearly identified by the legal text. For these reasons, the subject dimmers are appropriately classified under heading 8537, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the subject dimmers are classified under heading 8537, HTSUS, specifically subheading 8537.10.91, HTSUS, which provides for, "Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: For a voltage not exceeding 1,000 V: Other." The general column one rate of duty is 2.7 percent ad valorem.

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

EFFECT ON OTHER RULINGS:

NY N250956 (dated March 12, 2014) is hereby REVOKED.
NY N250985 (dated March 17, 2014) is hereby REVOKED.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN STYLES OF MEN'S FOOTWEAR

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the tariff classification of certain styles of men's footwear.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of styles M Pro Winter Reboot and M Summit Winter Reboot under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before July 25, 2025.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon L. Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon L. Stillwell at (202) 325–0739.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of certain styles of men's footwear. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N336132, dated November 22, 2023 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N336132, CBP classified styles M Pro Winter Reboot and M Summit Winter Reboot in heading 6402, HTSUS, specifically in subheading 6402.91.50, HTSUS, which provides for "[o]ther footwear with outer soles and uppers of rubber or plastics: Other footwear: Covering the ankle: Other: Other: Footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather." CBP has reviewed NY N336132 and has determined the ruling letter to be in error. It is now CBP's position that the men's footwear at issue is properly classified, in subheading 6402.19.90, HTSUS, which provides for "[o]ther footwear with outer soles and uppers of rubber or plastics: Sports footwear: Other: Other: Valued over $12/pair."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N336132 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H338307, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

N336132
November 22, 2023
CLA-2–64:OT:RR:NC:N2:247
CATEGORY: Classification
TARIFF NO.: 6402.91.5020

MS. CARRIE DURIO
THE NORTH FACE, DIVISION OF VF CORPORATION LLC
1551 WEWATTA STREET
DENVER, CO 80202

RE: The tariff classification of protective footwear from Vietnam

In your letter dated October 25, 2023, you requested a tariff classification ruling. You have submitted descriptive literature and samples. The samples will be returned as requested.

Styles M Pro Winter Reboot and M Summit Winter Reboot are closed toe/closed heel, men's winter boots. The boots cover the ankle but not the knee. Both styles are similar in style and construction but differ in types of closure. M Pro Winter Reboot features a cinch cord at the topline and the M Summit Winter Reboot possess two fasteners that close on the lateral side of the calf. The external surface area of the uppers (esau) of both styles are said to consist of 88.59 percent rubber/plastics and 11.41 percent textile material. The rubber or plastics outer soles are gripped for traction. They are crampon compatible to assist the wearer in climbing or walking in icy environments. The boots are well insulated, water resistant, and considered protective against cold. The footwear does not incorporate metal toe caps. The F.O.B. provided is $55 per pair.

The applicable subheading for the men's styles M Pro Winter Reboot and M Summit Winter Reboot will be 6402.91.5020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other footwear with outer soles and uppers of rubber of plastics: other footwear: covering the ankle: other: footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease, or chemicals or cold or inclement weather: for men: other. The rate of duty will be 37.5 percent ad valorem.

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

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in Title 19, Code of Federal Regulations (CFR), Section 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, whether directly, by reference, or by implication, is accurate and complete in every material respect. In the event that the facts are modified in any way, or if the goods do not conform to these facts at time of importation, you should bring this to the attention of U.S. Customs and Border Protection (CBP) and submit a request for a new ruling in accordance with 19 CFR 177.2. Additionally, we note that the material facts described in the foregoing ruling may be subject to periodic verification by CBP.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is

imported. If you have any questions regarding the ruling, please contact National Import Specialist Stacey Kalkines at stacey.kalkines@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H338307
OT:RR:CTF:FTM H338307 MJD
CATEGORY: Classification
TARIFF NO.: 6402.19.90

MS. CARRIE DURIO
THE NORTH FACE, DIVISION OF VF CORPORATION LLC
1551 WEWATTA STREET
DENVER, CO 80202

Re: Revocation of NY N336132; Tariff Classification of Men's Footwear from Vietnam

DEAR MS. DURIO:

This is in response to your request, dated February 8, 2024, filed by North Face®, a Division of VF Corporation LLC ("Requestor"), for reconsideration of New York Ruling Letter ("NY") N336132, issued to you on November 22, 2023. In NY N336132, U.S. Customs and Border Protection ("CBP") classified styles M Pro Winter Reboot and M Summit Winter Reboot under subheading 6402.91.50, HTSUS, which provides for "[o]ther footwear with outer soles and uppers of rubber or plastics: Other footwear: Covering the ankle: Other: Other: Footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather." We have reviewed NY N336132 and found it to be incorrect. For the reasons set forth below, we are revoking NY N336132.

FACTS:

In NY N336132, styles M Pro Winter Reboot and M Summit Winter Reboot were described as follows:

> Styles M Pro Winter Reboot and M Summit Winter Reboot are closed toe/closed heel, men's winter boots. The boots cover the ankle but not the knee. Both styles are similar in style and construction but differ in types of closure. M Pro Winter Reboot features a cinch cord at the topline and the M Summit Winter Reboot possess two fasteners that close on the lateral side of the calf. The external surface area of the uppers (esau) of both styles are said to consist of 88.59 percent rubber/plastics and 11.41 percent textile material. The rubber or plastics outer soles are gripped for traction. They are crampon compatible to assist the wearer in climbing or walking in icy environments. The boots are well insulated, water resistant, and considered protective against cold. The footwear does not incorporate metal toe caps. The F.O.B. provided is $55 per pair.

In the request for reconsideration of NY N336132, the Requestor states that the M Pro Winter Reboot and M Summit Winter Reboot are designed to be used as "sports footwear" and should be classified under subheading 6402.19.90, HTSUS, which provides for "[o]ther footwear with outer soles and uppers of rubber or plastics: Sports footwear: Other: Other: Valued over $12/pair." In support of its argument for reconsideration of NY N336132, the Requestor provides that both styles of footwear are intended to be worn while mountaineering and/or ice climbing. The Requestor details that the boots are not practical for everyday wear, nor are they designed to be worn as typical hiking boots. Moreover, the boots will be marketed as high performance footwear designed for adventurous outdoor pursuits including glacier, arctic, and snowshoe expeditions. Both styles of boots are said to contain a specially

designed indentation at the heel to support a crampon attachment. To further support its claims, the Requestor provided photos of the boots with crampons attached to them.

ISSUE:

What is the tariff classification of styles M Pro Winter Reboot and M Summit Winter Reboot?

LAW AND ANALYSIS:

Classification decisions under the HTSUS are made in accordance with the General Rules of Interpretation ("GRIs"). 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. If the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The 2025 HTSUS provisions under consideration are as follows:

6402	Other footwear with outer soles and uppers of rubber or plastics:
	Sports footwear:
6402.19	Other:
	Other:
6402.19.90	Valued over $12/pair
	Other footwear:
6402.91	Covering the ankle:
	Other:
	Other:
6402.91.50	Footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather

* * *

Note 4 to Chapter 64, HTSUS, provides:

Subject to note 3 to this chapter:

(a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments;

(b) The constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

* * *

Subheading Note 1 to Chapter 64, HTSUS, provides:

For the purposes of subheadings 6402.12, 6402.19, 6403.12, 6403.19 and 6404.11, the expression "sports footwear" applies only to:

(a) Footwear which is designed for a sporting activity and has, or has provision for the attachment of spikes, sprigs, cleats, stops, clips, bars or the like;

(b) Skating boots, ski-boots and cross-country ski footwear, snowboard boots, wrestling boots, boxing boots and cycling shoes.

* * *

In the present case, there is no dispute at the heading level. The external surface area of the uppers (esau) of both the M Pro Winter Reboot and M Summit Winter Reboot consist of 88.59 percent rubber/plastics and 11.41 percent textile material, and the outer soles of both boots are made of rubber or plastics. In accordance with Note 4 to Chapter 64, HTSUS, the boots are classified by the constituent material having the greatest external surface area of the upper and the constituent material having the greatest external surface area of the outer sole in contact with the ground. Here, that is rubber or plastic for both the uppers and the outer soles of both boots. As a result, the boots are classified in heading 6402, HTSUS, as "[o]ther footwear with outer soles and uppers of rubbers or plastics." The instant issue is whether, at the subheading level, the boots are "sports footwear," provided for in subheading 6402.19, HTSUS.

Subheading Note 1(a) to Chapter 64, HTSUS, describes "sports footwear," as "[f]ootwear which is designed for a sporting activity and has, or has provision for the attachment of spikes, sprigs, cleats, stops, clips, bars or the like." CBP has long interpreted Subheading Note 1 to Chapter 64, HTSUS, in a narrow manner. Moreover, CBP does not broadly interpret the exemplars "spikes, sprigs, cleats, stops, bars or the like." That being said, it is CBP's position that the exemplars of Subheading Note 1(a) to Chapter 64, HTSUS, include projections that are attached to, or molded into, the soles of "sport footwear" in order to provide traction during outdoor sporting activities such as golf, field sports (e.g., baseball, soccer, American football, rugby, etc.), or track and field events. CBP has also considered crampons and similar attachments for rock and ice climbing boots to be comparable projections that possess relatively sharp points or edges and are designed to dig into turf or ice.

For example, in NY M81358, dated April 17, 2006, CBP declined to classify the "Style M Lifty 400 GTX" winter hiking/multisport boot as "sports footwear." The boot was designed with a molded "lip" at the heel that allowed for the attachment of a crampon. In deciding that the boot was not "sports footwear," CBP stated that the boot "aside from the heel lip, [had] no application for the attachment of spikes, sprigs, stops, clips, bars or the like." CBP also stated that the "boot [was] not designed for a specific sporting activity" and that it was "an everyday protective winter walking/hiking boot." Moreover, CBP emphasized that "the fact that the boot [would] accept the attachment of a crampon does not, in itself, qualify it as 'sports footwear." However, in NY J85526, dated June 16, 2003, CBP classified the styles "T-Rock Thermal" and the "T-Rock Soft" mountaineering boots as "sports footwear" in subheading 6402.19, HTSUS. Both boots were "specially designed with a molded-in notched groove around the toe and a lipped groove at the back around the heel to accept the addition of steel spiked crampons." In making the determination that the boots were "sports footwear," CBP stated that "the

boots are specially adapted for the sporting activity of mountain climbing and have the '... provision for the attachment for spikes, sprigs, cleats, stops, clips, bars, or the like."

Similarly, in NY G85532, dated January 9, 2001, CBP classified style "Garmont Tower GTX" hiking shoe designed with an indention at the heel to hold crampons for ice-climbing, mixed mountaineering and related activities in subheading 6403.19, HTSUS, as "sports footwear." CBP found that examining the boot with the crampon attached revealed that the specially designed indentation at the heel enabled the boot to meet the definition of "sports footwear." Likewise, in NY D88063, dated February 23, 1999, CBP classified two mountain climbing boots, the "Explorer" and the "Forerunner" in heading 6404.11, HTSUS, as "sports footwear." Both styles of boots had been specially designed for the sporting market and had a heel bar that accommodated the attachment of crampons as well as snowshoe bindings.

Similarly, in NY A88498, dated November 6, 1996, CBP classified five styles of ice climbing boots that had a specially designed indention at the heel and toe to hold crampons in subheading 6403.19, HTSUS, as "sports footwear." Also, in NY A82723, dated May 7, 1996, CBP classified the "Inverno" boot meant for ice-climbing and mountaineering in subheading 6402.19, HTSUS, as "sports footwear." The boot had "specially designed 'welts' to hold crampons." (NY A82723 was affirmed by Headquarters Ruling Letter ("HQ") 959494, dated September 27, 1996). Likewise in NY A88497, dated November 1, 1996, CBP classified the ice climbing and mountaineering boot called the "Trango" in subheading 6403.19, HTSUS, as "sports footwear." In making that decision, CBP stated that it was the specially designed indentation at the heel of the boot to hold crampons that enabled the boot to meet the definition of "sports footwear."

Here, we find that the M Pro Winter Reboot and M Summit Winter Reboot are appropriately classified in subheading 6402.19, HTSUS, as they meet the requirements of "sports footwear" in Subheading Note 1(a) to Chapter 64, HTSUS. First, both styles of boots are specially designed for a sporting activity. In particular, the boots are made for mountaineering and/or ice climbing. They are also marketed for outdoor pursuits including glacier, arctic, and snowshoe expeditions. Moreover, both boots are not meant to be worn as an everyday wear or typical hiking boot. Second, both styles of boots have a "provision for the attachment of spikes, sprigs, cleats, stops, clips, bars or the like" in the form of a specially designed indentation at the heel of the boots to support crampon attachment.

Unlike the M Lifty 400 GTX winter hiking/multisport boot in NY M81358 which CBP declined to classify as "sports footwear" because the boot did not have a provision for the attachment of "spikes, sprigs, cleats, stops, clips, bars or the like" as required in Subheading Note 1(a) to Chapter 64, HTSUS, Styles M Pro Winter Reboot and M Summit Winter Reboot both are crampon compatible to assist the wearer in climbing or trekking in icy environments. As such, the M Pro Winter Reboot and M Summit Winter Reboot are akin to the "T-Rock Thermal" and the "T-Rock Soft" model mountaineering boots in NY J85526, the "Garmont Tower GTX" hiking shoe in NY G85532, the "Explorer" and the "Forerunner" in NY D88063, the ice climbing boots in in NY A88498, the "Inverno" boot in NY A82723, and the "Trango" boot in NY A88497, all of which were designed for a specific sport(s) and specially adapted for the use of a crampon in accordance with Subheading Note 1(a) to Chapter 64, HTSUS.

As a result, we find that styles M Pro Winter Reboot and M Summit Winter Reboot in NY N336132 are classified under subheading 6402.19.90, HTSUS, which provides for "[o]ther footwear with outer soles and uppers of rubber or plastics: Sports footwear: Other: Other: Valued over $12/pair."

HOLDING:

By application of GRIs 1 and 6, styles M Pro Winter Reboot and M Summit Winter Reboot in NY N336132 are classified under heading 6402, HTSUS, and specifically under subheading 6402.19.90, HTSUS, which provides for "[o]ther footwear with outer soles and uppers of rubber or plastics: Sports footwear: Other: Other: Valued over $12/pair." The 2025 column one, general rate of duty is 9% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N336132, dated November 22, 2023, is hereby REVOKED.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF HEMIN

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

ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of Hemin.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning the tariff classification of Hemin under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before July 25, 2025.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon L. Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon L. Stillwell at (202) 325–0739.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and

related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of Hemin. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") F88418, dated June 21, 2000 (Attachment A), and NY 866291, dated September 13, 1991 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY F88418 and NY 866291, CBP classified a product called Hemin which is derived from red blood cells in heading 2942, HTSUS, specifically in subheading 2492.00.50, HTSUS, which provides for "Other organic compounds: Other." CBP has reviewed NY F88418 and NY 866291and has determined the ruling letters to be in error. It is now CBP's position that Hemin is properly classified in heading 3002, HTSUS, specifically, in subheading 3002.12.0090, HTSUSA (Annotated), which provides for "Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products; cell cultures, whether or not modified: Antisera, other blood fractions

and immunological products, whether or not modified or obtained by means of biotechnological processes: Antisera and other blood fractions: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY F88418 and NY 866291 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H338374, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

NY F88418

June 21, 2000
CLA-2–29:RR:NC:2:239 F88418
CATEGORY: Classification
TARIFF NO.: 2942.00.5000

MR. JOSEPH J. CHIVINI
AUSTIN CHEMICAL COMPANY, INC.
1565 BARCLAY BOULEVARD
BUFFALO GROVE, ILLINOIS 60089

RE: The tariff classification of Hemin (CAS 16009–13–5) from the Netherlands.

DEAR MR. CHIVINI:

In your letter dated May 25, 2000, you requested a tariff classification ruling for Hemin (Chemical Name - chloro[7,12-diethenyl-3,8,13,17-tetramethyl-21H,23H-porphine-2,18-dipropanoato(4-)-N21,N22,N23,N24]-, dihydrogen, (SP-5–13)-Ferrate(2-) which you have stated is a chemical intermediate and will be packaged in bulk form.

The applicable subheading will be 2942.00.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for other organic compounds: other. The rate of duty will be 3.7 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Andrew Stone at 212–637–7063.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

NY 866291
September 13, 1991
CLA-2–29:S:N:N1:239 866291
CATEGORY: Classification
TARIFF NO.: 2942.00.5000

MS. ALICE M. WHITE
S.S.T. CORPORATION
P.O.BOX 1649
CLIFTON NJ 07015–1649

RE: The tariff classification of hemin from Switzerland.

DEAR MS. WHITE:

In your letter dated August 13, 1991, you requested a tariff classification ruling.

The applicable subheading for hemin (CAS# 16009-13-5) will be 2942.00.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for other organic compounds. The rate of duty will be 3.7 percent ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

HQ H338374
OT:RR:CTF:CPMAA H338374 CKG
CATEGORY: Classification
TARIFF NO.: 3002.12.0090

MR. JOSEPH J. CHIVINI
AUSTIN CHEMICAL COMPANY, INC.
1565 BARCLAY BOULEVARD
BUFFALO GROVE, ILLINOIS 60089

RE: Proposed revocation of NY F88418 and NY 866291; classification of Hemin

DEAR MR. CHIVINI:

This letter is in reference to New York Ruling Letter (NY) F88418, issued to you on June 21, 2000, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of Hemin. In NY F88418, U.S. Customs and Border Protection (CBP) classified the subject article in heading 2492, HTSUS, subheading 2492.00.50, HTSUS, which provides for, in pertinent part, other organic compounds. In addition, CBP has also reviewed NY 866291, dated September 13, 1991. We have reconsidered the classification of Hemin in heading 2942, HTSUS, and determined that the classification was erroneous. For the reasons set forth below, we are revoking NY F88418 and NY 866291.

FACTS:

Hemin (CAS number 16009–13–5) is an iron-containing porphyrin derived from red blood cells used for the treatment of acute porphyria, which occurs when chemical compounds produced by the body called porphyrins are not broken down effectively, which can cause symptoms such as light sensitivity, rashes, as well as abdominal pain or cramping[1]. Hemin is obtained from red blood cells via an extraction and purification process. Hemin inhibits the production of porphyrins in the body.

ISSUE:

Whether Hemin is classified in heading 2942, HTSUS, as an other organic compound, or in heading 3002, HTSUS, as a blood fraction.

LAW AND ANALYSIS:

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

GRI 3 provides, in pertinent part:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or

[1] See *https://www.mayoclinic.org/diseases-conditions/porphyria/symptoms-causes/syc-20356066*; last visited June 11, 2025.

substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

The 2025 HTSUS provisions at issue are as follows:

2942.00:	Other organic compounds
2942.00.5000:	Other
3002:	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products; cell cultures, whether or not modified
	Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes
3002.12:00:	Antisera and other blood fractions
3002.12.0090:	Other

Note 2 to Chapter 29 provides as follows:

2. This chapter does not cover:

(e) Immunological products of heading 3002[.]

Note 2 to Chapter 30 provides as follows:

For the purposes of heading 3002, the expression "immunological Products" applies to peptides and proteins (other than goods of heading 2937) which are directly involved in the regulation of immunological processes, such as monoclonal antibodies (MAB), antibody fragments, antibody conjugates and antibody fragment conjugates, interleukins, interferons (IFN), chemokines and certain tumor necrosis factors (TNF), growth factors (GF), hematopoietins and colony stimulating factors (CSF).

* * * *

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

EN 30.02(C)(1) provides, in pertinent part, as follows:

The heading covers, *inter alia*, the following products derived from blood (including vascular endothelial cells): "normal" sera, human normal immunoglobulin, blood fractions and truncated variants (parts) thereof with enzymatic properties/activity, plasma, thrombin, fibrinogen, fibrin and other blood coagulation factors, thrombomodulin, blood globulins, serum globulins, and haemoglobin. This group also includes modified thrombomodulins and modified haemoglobins obtained by means of biotechnological processes, e.g., sothrombomodulin alfa (INN) and thrombomodulin alfa (INN), as well as cross-linked haemoglobins such as hemoglobin crosfumaril (INN), hemoglobin glutamer (INN) and hemoglobin raffimer (INN).

* * * *

A blood fraction refers to the components derived from whole blood, which is made up of four major parts: red blood cells, white blood cells, platelets, and plasma. Blood fractions can be categorized into major and minor fractions. Major fractions include the primary components, while minor fractions consist of substances extracted from these components, such as albumin and clotting factors, which are used in various medical treatments. *See Understanding Blood Components and Fractions | MedStar Health* (last visited May 29, 2025).

Hemin is a component of blood that is extracted from whole human blood. It is therefore a blood fraction of heading 3002. Hemin is thus *prima facie* classified in both heading 2942, HTSUS, as an organic compound, and heading 3002, HTSUS, as a blood fraction. As blood fractions do not meet the definition of Note 2 to Chapter 30 defining "immunological products," they are not excluded from Chapter 29 by Note 2 to that chapter. The classification of Hemin therefore cannot be resolved at the GRI 1 level. Applying GRIs in order, GRI 3(a) provides that the heading which provides the most specific description shall be preferred to headings providing a more general description. As Hemin is more specifically described as a blood fraction than as an "other" organic compound, it is classified in heading 3002, HTSUS, by application of GRI 3(a).

HOLDING:

By application of GRIs 1 and 3(a), Hemin is classified in heading 3002, HTSUS, and specifically, subheading 3002.12.0090, HTSUSA (Annotated), which provides for "[h]uman blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products; cell cultures, whether or not modified: Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes: Antisera and other blood fractions: Other." The 2025, column one, general rate of duty is Free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

NY F88418, dated June 21, 2000, and NY 866291, dated September 13, 1991, are hereby REVOKED in accordance with the above analysis.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Cc:
Ms. Alice M. White
S.S.T. Corporation
P.O. Box 1649
Clifton NJ 07015-1649

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 05 2025)

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 2025. A total of 136 recordation applications were approved, consisting of 3 copyrights and 133 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 2025

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 25–00335	5/6/2025	5/6/2045	DERMEND BRUISE 2.5 OZ.	Ferndale IP, Inc.	No
COP 25–00336	5/7/2025	5/7/2045	Folium.	Artistic Tile, Inc.	No
COP 25–00337	5/14/2025	5/14/2045	Warmies Fully Heatable Large Plush Toy Sloth	Intelex Group UK LTD. (United Kingdom)	No
TMK 05–00862	6/1/2015	7/23/2035	DONKEY KONG	Nintendo of America Inc.	No
TMK 05–00990	8/5/2015	8/17/2035	CHROME HEARTS and HORSESHOE AND A CROSS DESIGN	Chrome Hearts LLC	No
TMK 05–01043	12/20/2005	3/13/2035	THUNDERBIRD	Ford Motor Company	No
TMK 06–00137	6/15/2015	8/10/2035	Bucket Design	Tapco, Inc.	No
TMK 06–00321	7/22/2015	6/4/2035	PANTENE	The Procter & Gamble Company	No
TMK 06–00676	5/5/2015	5/8/2035	CALL OF DUTY	Activision Publishing, Inc.	No
TMK 06–01221	11/30/2017	3/13/2026	INTERTEK ETL LISTED and Design	Intertek Testing Services NA, Inc.	No
TMK 06–01457	8/24/2015	7/27/2035	Rado & Design	Rado Uhren A.G. (Rado Watch Co. LTD) (Montres Rado S.A.) (Switzerland)	No
TMK 07–00031	8/3/2015	8/24/2035	CH (Stylized)	Chrome Hearts LLC	No
TMK 07–00671	6/29/2007	8/17/2035	SERIES G	Eaton Corporation	No
TMK 09–00259	3/24/2015	8/10/2035	Invicta Design	Invicta Watch Company of America, Inc.	No
TMK 09–00481	7/1/2009	4/4/2035	TTT Trinidad Design	Ausa Premium Cigar Holdings Inc.	No
TMK 10–00916	5/7/2015	7/5/2035	FEATHER (Stylized)	Feather Safety Razor Co., Ltd.	No
TMK 11–00142	1/30/2011	8/13/2035	KOSS and Headphones Design	Koss Corporation	No
TMK 11–00355	3/15/2015	7/12/2035	S-WORKS	Specialized Bicycle Components, Inc.	No
TMK 11–00909	4/20/2015	5/14/2035	VALTREX	GlaxoSmithKline LLC	No

CBP IPR RECORDATION — MAY 2025

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 12–01042	8/23/2015	8/17/2035	XFORCE	PR Trading Co.	No
TMK 12–01458	6/29/2018	5/8/2035	HEXARMOR	Performance Fabrics, Inc.	No
TMK 13–01170	10/19/2015	5/22/2035	Configuration of a Light Fixture	Louis Poulsen A/S (Denmark)	No
TMK 15–00130	2/9/2015	2/18/2035	Cadillac Crest Emblem Design	General Motors LLC	No
TMK 15–00287	3/23/2015	6/6/2035	Apres L'ondee (Stylized)	Gurelain Inc.	No
TMK 15–00288	3/22/2015	6/6/2035	MITSOUKO (Stylized)	Guerlain Inc.	No
TMK 15–00290	3/22/2015	6/6/2035	L'HEURE BLEUE (Stylized)	Guerlain Inc.	No
TMK 15–00322	4/6/2015	8/3/2035	KIPLING	Kipling Apparel Corp.	No
TMK 15–00401	4/27/2015	6/10/2035	amiibo	Nintendo of America Inc.	No
TMK 15–00462	5/18/2015	7/28/2035	Configuration of USB adapter	Apple Inc.	No
TMK 15–00463	5/18/2015	7/28/2035	USB adapter design	Apple Inc.	No
TMK 15–00615	7/7/2015	8/26/2035	Yellow Border Contrasting Gray Face Design	Fluke Corporation	No
TMK 15–00616	7/6/2015	8/26/2035	Yellow Border Contrasting Gray Face Trade Dress (Tapered)	Fluke Corporation	No
TMK 15–01124	11/17/2015	6/5/2035	BELL and Design	Bell Sports Inc.	No
TMK 17–00109	1/30/2017	8/5/2035	LE LIS	Gilli, Inc.	No
TMK 17–00285	3/15/2017	5/17/2035	YOSHI GRILL & BAKE MATS & Design	Ideavillage Products Corp.	No
TMK 17–00376	4/17/2017	6/24/2035	SUPERCELL (Stylized)	Supercell Oy	No
TMK 17–00849	8/16/2017	5/8/2035	SHIMMERSCREEN	Ball Chain Manufacturing Co. DBA BCM Corporation	No
TMK 17–01231	11/29/2017	5/10/2035	AIWA	Aiwa Corporation	No

CBP IPR RECORDATION — MAY 2025

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 18–00706	7/23/2018	7/28/2035	LIGHTNING	Apple Inc.	No
TMK 19–00485	4/26/2019	6/7/2035	STRONG BOX	Republic Brands L.P.	No
TMK 19–00602	5/31/2019	6/17/2035	ABADIE	DRL Enterprises, Inc.	No
TMK 19–01215	11/13/2019	5/24/2035	INNISFREE (Stylized)	Innisfree Corporation	No
TMK 19–01224	11/22/2019	5/17/2035	STANLEY CUP	National Hockey League (Canada)	No
TMK 20–00298	3/23/2020	7/28/2035	EIDON	SGS Sports Inc. (Canada)	No
TMK 20–00514	6/30/2020	6/17/2035	MCM (Stylized) and Design Pattern	TRIAS Holding AG (Switzerland)	No
TMK 21–00265	3/8/2021	3/1/2035	Lincoln Star Design	Ford Motor Company	No
TMK 21–00329	4/1/2021	6/17/2035	Adobe “A” logo & DESIGN	Adobe Inc.	No
TMK 21–00975	10/24/2021	2/2/2035	KELLOGG’S RAISIN BRAN	Kellogg North America Company	No
TMK 22–00332	4/21/2022	5/17/2035	COMPASSION	Compassion International, Inc.	No
TMK 22–00529	7/14/2022	7/7/2035	NOCTOPLEX	Medella Springs, LLC	No
TMK 22–00738	9/7/2022	8/26/2035	NAVAL AIR TRAINING COMMAND BLUE ANGELS & DESIGN	Office of Naval Research, Department of the Navy	No
TMK 22–00810	9/20/2022	5/12/2035	GARDENA	Husqvarna AB (Sweden)	No
TMK 22–00896	10/6/2022	8/3/2035	IRONSTONE VINEYARDS	Kautz Vineyards, Inc.	No
TMK 25–04089	5/2/2025	10/23/2029	Configuration of Latch Strike	Kason Industries, Inc.	No
TMK 25–04090	5/2/2025	6/25/2035	AMIIBO & Design	Nintendo of America Inc.	No
TMK 25–04091	5/2/2025	6/25/2035	A & Design	Nintendo of America Inc.	No
TMK 25–04092	5/2/2025	6/25/2035	NES REMIX Design	Nintendo of America Inc.	No
TMK 25–04093	5/2/2025	12/13/2034	4RUNNER	Toyota Jidosha Kabushiki Kaisha (Japan)	No

CBP IPR RECORDATION — MAY 2025

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 25–04094	5/2/2025	5/11/2035	Kirby Character Design	Nintendo of America Inc.	No
TMK 25–04095	5/2/2025	7/17/2034	TOYOTA (Stylized)	Toyota Jidosha Kabushiki Kaisha, a.k.a. Toyota Motor Corporation (Japan)	No
TMK 25–04096	5/2/2025	5/18/2035	M (Stylized)	Nintendo of America Inc.	No
TMK 25–04097	5/2/2025	5/25/2035	L (Stylized)	Nintendo of America Inc.	No
TMK 25–04098	5/2/2025	6/16/2034	TRD	Toyota Jidosha Kabushiki Kaisha, a.k.a. Toyota Motor Corporation (Japan)	No
TMK 25–04099	5/2/2025	5/4/2034	Configuration of Lexus Grille	Toyota Jidosha Kabushiki Kaisha TA (Japan)	No
TMK 25–04100	5/1/2025	8/14/2027	AIR-CUSHION FINISH	The United States Playing Card Company	No
TMK 25–04101	5/1/2025	1/3/2036	Cherubs on Playing Card Design	The United States Playing Card Company	No
TMK 25–04102	5/1/2025	7/30/2026	King Riding Bicycle Design	The United States Playing Card Company	No
TMK 25–04103	5/1/2025	3/3/2033	POKER BICYCLE RIDER BACK PLAYING CARDS AIR CUSHION FINISH MADE IN U.S.A. THE U.S. PLAYING CARD CO. POKER 808 Design	The United States Playing Card Company	No
TMK 25–04104	5/1/2025	12/20/2032	BICYCLE (Stylized)	The United States Playing Card Company	No
TMK 25–04105	5/1/2025	8/23/2033	Bicycle Trusted Since 1885 Playing Cards Standard Design	The United States Playing Card Company	No
TMK 25–04106	5/1/2025	6/12/2034	Casino Quality Club Special Bee Playing Cards Design	The United States Playing Card Company	No
TMK 25–04107	5/1/2025	2/28/2034	Tree Design	Department of Bioregion	No
TMK 25–04108	5/1/2025	12/13/2032	Los Angeles Lakers Design	The Los Angeles Lakers, Inc.	No
TMK 25–04109	4/30/2025	4/30/2026	BUCHANAN'S	Diageo Brands B.V. (Netherlands)	No

CBP IPR RECORDATION — MAY 2025

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 25–04110	5/5/2025	6/4/2035	THE ULTIMATE VENTED HAIRBRUSH	Tangle Teezer Limited (United Kingdom)	No
TMK 25–04111	5/5/2025	6/5/2034	Oval Design	Tangle Teezer Limited (United Kingdom)	No
TMK 25–04112	5/5/2025	5/18/2035	THE ULTIMATE DETANGLER	Tangle Teezer Limited (United Kingdom)	No
TMK 25–04113	5/5/2025	7/30/2034	ZEVO Design	The Procter & Gamble Company	No
TMK 25–04114	5/5/2025	10/5/2026	HONEYWELL	Honeywell International Inc.	No
TMK 25–04115	5/5/2025	9/27/2033	TOYOTA CROWN	Toyota Jidosha Kabushiki Kaisha (Japan)	No
TMK 25–04116	5/5/2025	8/16/2033	BZ Design	Toyota Jidosha Kabushiki Kaisha (Japan)	No
TMK 25–04117	5/5/2025	1/10/2034	T Toyota Genuine Parts Design	Toyota Jidosha Kabushiki Kaisha (Japan)	No
TMK 25–04118	5/5/2025	3/20/2030	MODUTROL	Honeywell International Inc.	No
TMK 25–04120	5/6/2025	2/25/2028	Polywatch (Stylized)	EVI GMBH (Germany)	No
TMK 25–04121	5/7/2025	8/6/2035	IMMUNO 150	Liquid Assets, Inc.	No
TMK 25–04122	5/7/2025	6/8/2026	Configuration of a Suction Regulator	Boehringer Laboratories, Inc.	No
TMK 25–04123	5/7/2025	11/20/2034	Mykids-USA Design	Aharon & Ita Corp	No
TMK 25–04124	5/9/2025	5/27/2028	OOLY & Design	Ooly, LLC	No
TMK 25–04125	5/9/2025	6/29/2026	INNING (Stylized)	Hanksugi Japan Ltd (British Virgin Islands)	No
TMK 25–04126	5/13/2025	7/22/2035	BON VIVANT	Roederer Estate Inc	No
TMK 25–04127	5/13/2025	10/22/2028	BIOSIL	Bio Minerals Naamloze Vennootschap (Belgium)	No
TMK 25–04128	5/13/2025	5/20/2028	TERVIS	Tervis Tumbler Company	No
TMK 25–04129	5/14/2025	7/6/2031	CORN NUTS	Hormel Foods, LLC	No

CBP IPR RECORDATION — MAY 2025

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 25–04130	5/15/2025	12/7/2034	Configuration of Seatbelt Buckle	AmSafe, Inc.	No
TMK 25–04131	5/15/2025	1/17/2034	NEWCASTLE UNITED & Design	Newcastle United Football Company Limited (United Kingdom)	No
TMK 25–04132	5/15/2025	12/30/2027	STAR REGISTRY	International Star Registry of Illinois, Ltd.	No
TMK 25–04133	5/16/2025	6/30/2031	DRUNK ELEPHANT	Shiseido Americas Corporation	No
TMK 25–04134	5/16/2025	4/29/2035	LT (Stylized)	Linear Technology Corporation	No
TMK 25–04135	5/16/2025	12/2/2034	NF (Stylized)	Lightforce U.S.A., Inc. DBA Nightforce Optics, Inc.	No
TMK 25–04136	5/16/2025	4/20/2035	COPPER FIT	Ideavillage Products Corp.	No
TMK 25–04137	5/13/2025	6/18/2035	ORIENTICA	Orientica Perfumes Industry FZE (United Arab Emirates)	No
TMK 25–04138	5/19/2025	2/11/2035	BOHOBLU	Bohoblu, LLC	No
TMK 25–04139	5/19/2025	1/24/2034	DINGO1969	Dan Post Boot Company C/O McRae Industries, Inc.	No
TMK 25–04140	5/19/2025	4/25/2032	SHARK	SharkNinja Operating LLC	No
TMK 25–04141	5/19/2025	6/12/2034	FLEXSTYLE	SharkNinja Operating LLC	No
TMK 25–04142	5/19/2025	9/20/2033	BRUCE BOLT	Bruce Bolt, LLC	No
TMK 25–04143	5/19/2025	1/8/2034	BRUCE BOLT	Bruce Bolt, LLC	No
TMK 25–04144	5/19/2025	3/24/2035	BRUCE BOLT & Design	Bruce Bolt, LLC	No
TMK 25–04145	5/21/2025	5/27/2028	Elephant Design	Shiseido Americas Corporation	No
TMK 25–04146	5/21/2025	3/12/2034	RHODE	HRBeauty LLC	No
TMK 25–04147	5/21/2025	7/4/2033	RHODE	HRBeauty LLC	No

CBP IPR RECORDATION — MAY 2025

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 25–04148	5/21/2025	8/30/2033	Rhode (Stylized)	HRBeauty LLC	No
TMK 25–04149	5/21/2025	3/8/2035	DINGO	Dan Post Boot Company	No
TMK 25–04150	5/22/2025	3/9/2035	MCRAE	McRae Industries, Inc.	No
TMK 25–04151	5/22/2025	11/7/2028	PROSTAGENIX	Verified Nutrition LLC	No
TMK 25–04152	5/22/2025	1/24/2034	LAREDO	Dan Post Boot Company C/o McRae Industries, Inc.	No
TMK 25–04153	5/22/2025	2/28/2033	GILDAN PERFORMANCE	Gildan Activewear SRL (Barbados)	No
TMK 25–04154	5/22/2025	2/8/2035	NAVY	The Department of the Navy	No
TMK 25–04155	5/22/2025	7/29/2035	UNITED STATES MARINE CORPS	U.S. Marine Corps	No
TMK 25–04156	5/23/2025	1/14/2027	POSI-TEMP	Fortune Brands Water Innovations LLC	No
TMK 25–04157	5/23/2025	2/22/2033	GOLDFINGER & Fingerprint Design	Okra Holdings, Inc.	No
TMK 25–04158	5/23/2025	4/26/2026	GOLDFINGER	Okra Holdings, Inc.	No
TMK 25–04159	5/27/2025	4/28/2033	HOPE PHARMACEUTICALS & Design	Hope Medical Enterprises, Inc.	No
TMK 25–04160	5/27/2025	5/12/2028	HOPE	Hope Medical Enterprises, Inc. DBA HopePharmaceuticals	No
TMK 25–04161	5/27/2025	11/14/2027	HOPE PHARMACEUTICALS	Hope Medical Enterprises, Inc.	No
TMK 25–04162	5/27/2025	2/25/2035	Dallas Stars “D” Design	DSE Hockey Club, L.P.	No
TMK 25–04163	5/28/2025	5/26/2035	GUCCI	Gucci America, Inc.	No
TMK 25–04164	5/28/2025	11/10/2034	GOLF PRIDE	Eaton Corporation	No
TMK 25–04165	5/28/2025	4/22/2033	SLEEP TIGHT	Imperial Tea Garden	No
TMK 25–04166	5/28/2025	12/10/2029	HOJING	Fortune Growers LLC	No

CBP IPR RECORDATION — MAY 2025

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 25–04167	5/28/2025	7/8/2035	Red Circle Design	Hoodman Corporation	No
TMK 25–04168	5/29/2025	6/4/2027	DEXTER	Columbia Insurance Company	No
TMK 25–04169	5/29/2025	2/11/2035	FORTUNE GROWERS & Design	Fortune Growers LLC	No
TMK 25–04170	5/29/2025	8/21/2029	FORTUNE GROWERS TAJ & Design	Fortune Growers LLC	No
TMK 25–04171	5/29/2025	12/10/2029	ROLA-CHEM	The Specialty Mfg. Co.	No
TMK 95–00517	4/27/2015	6/7/2035	STAR FOX	Nintendo of America Inc.	No

U.S. Court of International Trade

Slip Op. 25–67

JINKO SOLAR IMPORT AND EXPORT CO., LTD., et al., Plaintiffs, and JA SOLAR TECHNOLOGY YANGZHOU CO., LTD., et al., Plaintiff-Intervenors, v. UNITED STATES, Defendant, and AMERICAN ALLIANCE FOR SOLAR MANUFACTURING, Defendant-Intervenor.

Before: Claire R. Kelly, Judge
Consol. Court No. 22–00219
PUBLIC VERSION

[Sustaining in part and remanding in part Commerce's redetermination.]

Dated: May 30, 2025

Ned H. Marshak, *Dharmendra N. Choudhary*, *Jordan C. Kahn*, *Brandon M. Petelin,* and *Elaine F. Wang*, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, of New York, NY and Washington, D.C., for plaintiffs Jinko Solar Import and Export Co. Ltd., Jinko Solar Co., Ltd., Jinkosolar Technology (Haining) Co., Ltd., Yuhuan Jinko Solar Co., Ltd., Zhejiang Jinko Solar Co., Ltd., Jiangsu Jinko Tiansheng Solar Co., Ltd., Jinkosolar (Chuzhou) Co., Ltd., Jinkosolar (Yiwu) Co., Ltd., and Jinkosolar (Shangrao) Co., Ltd.

Robert G. Gosselink, *Jonathan M. Freed*, and *Kenneth N. Hammer*, Trade Pacific PLLC, of Washington D.C., for consolidated plaintiffs Trina Solar Co., Ltd., Trina Solar (Changzhou) Science & Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Trina Solar (Hefei) Science & Technology Co., Ltd., Changzhou Trina Hezhong Photoelectric Co., Ltd.

Jeffrey S. Grimson, *Sarah M. Wyss*, *Bryan P. Cenko*, *Jill A. Cramer*, *Kristin H. Mowry*, and *Yixin (Cleo) Li*, Mowry & Grimson, PLLC, of Washington D.C., for consolidated plaintiffs and plaintiff-intervenors JA Solar Technology Yangzhou Co., Ltd., and Shanghai JA Solar Technology Co., Ltd.

Craig A. Lewis, *Lindsay K. Brown*, and *Nicholas W. Laneville, I*, Hogan Lovells US LLP, of Washington D.C., for plaintiff-intervenor BYD (Shangluo) Industrial Co., Ltd.

Gregory S. Menegaz, *Alexandra H. Salzman*, and *Vivien J. Wang* deKieffer & Horgan, PLLC, of Washington D.C., for consolidated plaintiff-intervenors Risen Energy Co., Ltd.

Kara M. Westercamp, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for the defendant United States. On the brief were *Patricia M. McCarthy*, Director, *Reginald T. Blades, Jr.*, Assistant Director, and *Brian M. Boynton*, Principal Deputy Assistant Attorney General. Of counsel were *Fee Pauwels*, *Jack Dunkelman*, and *William M. Purdy*, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.

Timothy C. Brightbill, *Laura El-Sabaawi*, *Stephanie M. Bell*, and *Paul A. Devamithran*, Wiley Rein, LLP, of Washington D.C., for defendant-intervenor American Alliance for Solar Manufacturing.

OPINION AND ORDER

Kelly, Judge:

Before the Court is the U.S. Department of Commerce's ("Commerce") redetermination in the eighth administrative review of the antidumping duty order covering crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China ("China"). *See Jinko Solar Import and Export Co., v. United States*, 701 F. Supp. 3d 1367 (Ct. Int'l Trade 2024) ("*Jinko I*"); *see also* Final Results of Remand Redetermination Pursuant to Court Remand, Aug. 29, 2024, ECF No. 89 ("*Remand Results*").

On remand, Commerce provided further explanation of its determinations to: (1) value solar glass using Romanian Harmonized Tariff Schedule ("HTS") data, *Remand Results* at 30—39, (2) value air freight using Freightos data, *Remand Results* at 12–19, and (3) calculate Risen's rate using its methodology for selecting among facts available with an adverse inference based on a lack of data from Risen's unaffiliated solar cell suppliers. *Remand Results* at 19–27. Plaintiffs, Consolidated Plaintiffs, and Plaintiff-Intervenors challenge Commerce's decision to make no changes following the Court's Remand Order. *See generally* Pl. Jinko Solar's Cmts. on Final Results of Redetermination Pursuant to Court Remand, Oct. 30, 2024, ECF No. 98 ("Pl. Cmts."); Consol. Pl's. Remand Cmts. on Final Results of Redetermination Pursuant to Court Remand, Oct. 30, 2024, ECF No. 97 ("Consol. Pl. Cmts."); Pl. Intervenor BYD Cmts. on Final Results of Redetermination Pursuant to Court Remand, Oct. 30, 2024, ECF No. 100 ("BYD Cmts."); Cmts. on Final Remand Redetermination of Pl. Intervenors JA Solar Technology Yangzhou CO., Ltd. and Shanghai JA Solar Technology Co., Ltd., Oct. 30, 2024, ECF No. 101 ("JA Solar Cmts."). For the reasons that follow, the Court sustains Commerce's redetermination regarding its use of Freightos data to value air freight but remands Commerce's redetermination with respect to its selection of Romanian HTS 7007.19.80 to value solar glass, and its calculation of an adverse inference using facts otherwise available.

BACKGROUND

The Court presumes familiarity with the facts as set forth in *Jinko I* and will only recount those pertinent to the instant matter. *See generally Jinko I*. On December 7, 2012, Commerce published the antidumping duty ("ADD") order on solar cells from China. *See generally Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China*, 77 Fed.

Reg. 73,018 (Dep't Commerce Dec. 7, 2012) (amended final determination). On February 4, 2021, Commerce initiated the eighth administrative review of the ADD order. *See generally Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 Fed. Reg. 8,166, 8,168–69 (Dep't Commerce June 8, 2020). Commerce chose Plaintiffs Jinko[1] and Risen[2] as mandatory respondents in the eighth ADD review. Respond. Select. Memo. at 1–5, PD 53, CD 5, bar code 4092029–01 (Feb. 25, 2021).[3] On December 23, 2021, Commerce published its preliminary determination. *See generally Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; 2019–2020*, 86 Fed. Reg. 72,923 (Dep't Commerce Dec. 23, 2021) (preliminary results and partial rescission) ("*Preliminary Results*") and accompanying preliminary issues and decision memo. ("Prelim. Decision Memo."). On August 10, 2022, Commerce issued its final results. *See generally* 87 Fed. Reg. 38,379 (Dep't Commerce June 28, 2022), as amended by *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*, 87 Fed. Reg. 48,621 (Dep't Commerce Aug. 10, 2022) (amended final results) ("*Final Results*") and accompanying Issues and Decision Memo, Oct. 5, 2022, ECF No. 24–5 ("Final Decision Memo.").

Commerce determined the surrogate value ("SV") of the respondents' entries of subject merchandise using data from a surrogate country to value the factors of production ("FOP"), because Commerce identifies China as a nonmarket economy ("NME"). *See* Section 773(c)(4) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1677b(c)(4).[4] Commerce chose Malaysia as the primary surrogate country for valuing all FOPs. Prelim. Decision Memo. at 16–19, 23–28; Final Decision Memo. at 18. Commerce also determined import data under Romanian HTS 7007.19.80 was the best information to value the respondents' solar glass because it was more specific, reliable, and accurate to that input. [Commerce] Prelim. [SV] Memo. at 3, PD 403, bar code 4194750–01 (Apr. 16, 2021) ("Commerce Prelim. SV Memo."); Final Decision Memo. at 15. Commerce selected

[1] "Jinko" refers to Plaintiffs Jinko Solar Import and Export Co., Ltd.; Jinko Solar Co., Ltd.; Jinkosolar Technology (Haining) Co., Ltd.; Yuhuan Jinko Solar Co., Ltd.; Zhejiang Jinko Solar Co., Ltd.; Jiangsu Jinko Tiansheng Solar Co., Ltd.; Jinkosolar (Chuzhou) Co., Ltd.; Jinkosolar (Yiwu) Co., Ltd.; and Jinkosolar (Shangrao) Co., Ltd.

[2] "Risen" refers to Risen Energy Co., Ltd.

[3] Citations to administrative record documents in this opinion are to the numbers Commerce assigned to such documents in the indices, and all references to such documents are preceded by "PD" or "CD" to denote public or confidential documents.

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

Freightos data to value air freight. SV Memo. at 8; Prelim. Decision Memo. at 27; Final Decision Memo. at 22–25, 41–44.[5]

Commerce chose to apply partial facts available with an adverse inference to value Risen's missing data because it determined Risen failed to cooperate to the best of its ability by continuing to use suppliers that had not cooperated with Commerce's requests. Prelim. Decision Memo. at 15–16; Final Decision Memo. at 8–13. Commerce calculated a rate using facts otherwise available with an adverse inference that was "sufficiently adverse[,]" to incentivize cooperation. Prelim. Decision Memo. at 15–16; Final Decision Memo. at 8–13. The parties challenged various issues in the Final Decision Memo. before this Court, and on May 1, 2024, the Court issued *Jinko I*.[6]

On August 29, 2024, Commerce filed its *Remand Results*. *See Remand Results*. On October 30, 2024, Risen, Jinko, BYD (Shangluo) Industrial Co., Ltd. ("BYD"), and JA Solar Technology Yangzhou Co., Ltd. and Shanghai JA Solar Technology Co., Ltd. ("JA Solar") filed their comments on the *Remand Results*. *See* Consol. Pl. Cmts.; Pl. Cmts.; BYD Cmts.; JA Solar Cmts. On January 8, 2025, Defendant filed its reply to comments on the *Remand Results* and Defendant-Intervenor filed its comments in support of the *Remand Results*. *See* Def.'s Resp. [Pl. Cmts. on Commerce's Remand Redetermination], Jan. 8, 2025, ECF No. 107 ("Def. Reply"); Def.-Intv. American Alliance for Solar Manufacturing's Cmts. Supp. [Remand Results], Jan. 8, 2025, ECF No. 106 ("Def. Intv. Cmts.").

JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction pursuant to 19 U.S.C. § 1516a(a)(2)(B)(iii) and 28 U.S.C. § 1581(c), which grant the Court authority to review actions contesting the final determination in an administrative review of an ADD order. The Court will uphold Commerce's determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19

[5] Commerce granted Jinko's request to be excused from reporting its FOP data for some of its solar module and solar cell suppliers, reasoning that Jinko had a limited amount of missing data that could be substituted with evidence already on the record. Prelim. Decision Memo. at 15. Thus, Commerce did not use an adverse inference in place of the missing FOP data for Jinko. Prelim. Decision Memo. at 15.

[6] In *Jinko I* this Court sustained Commerce's determinations concerning: (1) Consolidated Plaintiffs' Trina Solar Co., Ltd.; Trina Solar (Changzhou) Science &Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; Trina Solar (Hefei) Science & Technology Co., Ltd.; and Changzhou Trina Hezhong Photoelectric Co., Ltd. ("Trina") separate rate status; (2) valuations of Plaintiffs' electricity, ocean freight, backsheet, and EVA; (3) use of JA Solar Malaysia's financial statements to calculate surrogate financial ratios; (4) deduction of Section 301 duties; and (5) use of facts available with an adverse inference against Plaintiffs. *Jinko I*, 701 F. Supp. 3d at 1397.

U.S.C. § 1516a(b)(1)(B)(i). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Huaiyin Foreign Trade Corp. (30) v. United States*, 322 F.3d 1369, 1374 (Fed. Cir. 2003) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). "The results of a redetermination pursuant to court remand are also reviewed 'for compliance with the court's remand order.'" *Xinjiamei Furniture (Zhangzhou) Co. v. United States*, 968 F. Supp. 2d 1255, 1259 (Ct. Int'l Trade 2014) (quoting *Nakornthai Strip Mill Public Co. v. United States*, 32 CIT 1272, 1274 (Ct. Int'l Trade 2008)).

DISCUSSION

I. Valuation of Solar Glass

Jinko, Risen, and Plaintiff-Intervenors argue that Commerce's decision to use Romanian HTS 7007.19.80 import data to value their solar glass FOPs is not supported by substantial evidence because (1) Commerce's definition of "absorbent layer" as glass that "takes in light without releasing it" is unsupported by substantial evidence and as a consequence Jinko's and Risen's glass does not fall within Romanian HTS 7007.19.80 and (2) Commerce ignored record evidence related to the unit of measurements in which Jinko and Risen reported their glass, which would have allowed Commerce to convert Jinko and Risen's glass consumption to a quantity expressed in square meters. Pl. Cmts. at 2—24; Consol. Pl. Cmts. at 2—19; BYD Cmts.; JA Solar Cmts. Defendant and Defendant-Intervenor respond that Commerce's decision to value solar glass using Romanian HTS 7007.19.80 import data is supported by substantial evidence and in accordance with this Court's remand order. *See* Def. Resp. at 15—22; Def. Intv. Cmts. at 2—12. For the reasons that follow, Commerce's valuation of solar glass FOPs is remanded for further consideration consistent with this opinion.

When Commerce determines whether and to what extent merchandise "is being, or is likely to be sold in the United States at less than fair value," Commerce compares the "normal value" of the merchandise to the U.S. price. 19 U.S.C. § 1677b(a). Normal value is the price for which a producer or exporter sells the subject merchandise in the ordinary course of trade in its home country or, in certain circumstances, a third country. 19 U.S.C. § 1677b(a)(1). When a review or investigation involves an NME, Commerce bases normal value not on sales, but on "the value of the factors of production utilized in producing the merchandise . . . [together with] an amount for general

expenses and profit plus the cost of containers, coverings, and other expenses." 19 U.S.C. § 1677b(c)(1). To value a respondent's FOPs and expenses, Commerce uses data from surrogate market economy countries that are: "(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." 19 U.S.C. § 1677b(c)(4). To the extent possible, Commerce's regulatory preference is to "value all factors in a single surrogate country." 19 C.F.R. § 351.408(c)(2).

When valuing FOPs, Commerce does so "based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." 19 U.S.C. § 1677b(c)(1); *see also Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014). Commerce selects the best available information by evaluating data sources based on their: (1) specificity to the input; (2) tax and import duty exclusivity; (3) contemporaneity with the period of review; (4) representativeness of a broad market average; and (5) public availability. *See* Import Admin., [Commerce], [NME] Surrogate Country Selection Process, Pol'y Bulletin 04.1 at 1 (Mar. 1, 2004), available https://access.trade.gov/Resources/policy/bull04–1.html (last visited May 27, 2025) ("Policy Bulletin 04.1").[7]

In this review, Commerce chose to value the FOPs for solar glass using Romanian HTS 7007.19.80 because Commerce determined that (1) using Malaysian HTS 7007.19.90 to value solar glass would be inexact as it is reported in square meters while the respondents' glass was reported in kilograms, and (2) Romanian HTS 7007.19.80 does not exclude the glass used by the respondents. Final Decision Memo. at 15—19. *Jinko I* remanded Commerce's determination; first, the Court found Commerce's conclusion that the Malaysian data was unreliable not supported by substantial evidence on the record. *Jinko I*, 701 F. Supp. 3d at 1382—83. The respondents purchase glass on a per piece basis, but Commerce required respondents to convert their per piece purchases to a quantity expressed in weight. *Jinko I*, 701 F. Supp. 3d at 1382 (citing [Jinko] Sect. D, E, App'xs XIII, Add'l Sect D, & Doubl. Remedies Resps. At App'x XIII:8, PDs 148–52, CDs 186–68 (May 4, 2021) ("Jinko DEQR"); [Risen's] Sect. D Questionnaire Resp. at App'x XIII:7, PD 147, CD 122, bar code 4116609–01 (Apr. 30, 2021)

[7] When choosing a primary surrogate country, Commerce considers: (1) each country's economic comparability with the NME country; (2) each country's production of comparable merchandise; (3) whether the potential surrogate countries that produce comparable merchandise are significant producers of comparable merchandise; and (4) the quality and availability of FOP data for the countries. Policy Bulletin 04.1.

("Risen Sect. D Resp.")). The Court determined Commerce failed to acknowledge record evidence that respondents argued would support a reliable conversion of Jinko and Risen's data from per piece to square meters or from kilograms to square meters. *Jinko I*, 701 F. Supp. 3d at 1382 (citing Risen Sect. D Resp. at Exh. D-34; Jinko DEQR at Exh. AD-9) (containing the dimensions and conversion ratios of Risen's and Jinko's glass). Second, the Court remanded Commerce's decision to value solar glass using Romanian HTS 7007.19.80 because Commerce did not address Jinko's arguments which detracted from its conclusion that the Romanian HTS heading at issue was not specific to the glass. *Jinko I*, 701 F. Supp. 3d at 1383. The Court asked Commerce to address how the data from Malaysia, as the primary surrogate country, is unreliable such that departure from its standard practice of using the data from the primary surrogate country is reasonable, or how the Romanian data was specific to the glass at issue. *Jinko I*, 701 F. Supp. 3d at 1382 (citing 19 C.F.R. § 351.408(c)(2)).

On remand, Commerce has not addressed the record evidence which detracts from its determination. Commerce fails to address concerns regarding the specificity of the Romanian HTS. *Remand Results* at 34—39. Because the term "absorbent layer" as used in Romanian HTS 7007.19.80 is not defined on the record, Commerce contends the plain meaning of this term is that "glass with an absorbent layer takes in light without releasing it, i.e., the light enters the glass but does not pass through the glass." *Remand Results* at 9. Commerce argues that the other excluded glass in Romanian HTS 7007.19.80 reinforces its interpretation because each includes characteristics "which limit light transmission." *Remand Results* at 9. Indeed, Commerce in the *Remand Results* proclaims "[a]ll of the other glass that is excluded from Romanian HTS 7007.19.80 have treatments that limit the amount of light that is transmitted through the glass." *Remand Results* at 36. Yet, Commerce proceeds to explain how some, but not all, the exemplars excluded from Romanian HTS 7007.19.80 limit light. *Remand Results* at 36. Romanian HTS 7007.19.80 reads:

> Toughened (Tempered) Safety Glass (Excl. Enamelled, Coloured Throughout The Mass, pacified, Flashed Or With An Absorbent Or Reflecting Layer, Glass Of Size And Shape Suitable For Incorporation In Motor Vehicles, Aircraft, Spacecraft, Vessels And Other Vehicles).

Remand Results at 30—31 n.97. Commerce explains how enamelled, coloured, pacified, flashed glass or glass with a reflecting layer limit light. *Remand Results* at 9. However, Commerce ignores the remaining exemplars in HTS 7007.19.80, i.e., glass suitable for incorporation in motor vehicles, aircraft, spacecraft, vessels and other vehicles. *Remand Results* at 9. It is unclear how Commerce can contend that all of the exemplars support the interpretation of glass with an absorbent layer as light limiting, when it does not address all of the exemplars. Jinko and Risen both argue that the processes of absorption and light transmission complement each other, and do not conflict. Pl. Cmts. at 16; Consol. Pl. Cmts. at 14. Although Commerce is entitled to weigh the record evidence, here the Romanian HTS heading, Commerce cannot ignore that which detracts from its determination. *CS Wind Vietnam Co. v. United States*, 832 F.3d 1367, 1373 (Fed. Cir. 2016) (quoting *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 720 (Fed. Cir. 1997)).

Commerce also fails to confront evidence supporting the reliability of the Malaysian data, especially considering Commerce's preference for using data from a primary surrogate country to value FOPs. Commerce explains in its *Remand Results* that the respondents, Jinko and Risen, reported their values by weight and "[t]hus, Commerce required an SV expressed in kilograms in order to value the kilograms of glass that each respondent reported in their FOP databases." *Remand Results* at 5—6. However, as noted in *Jinko I*, "the respondents reported their glass consumption in kilograms because Commerce specifically requested Jinko and Risen's consumption measurements to be based on weight in their Section D responses for this review." *Jinko I*, 701 F. Supp. 3d at 1382 (citing Jinko DEQR; Risen Sect. D Resp.). Therefore, to use Malaysian HTS 7007.19.90, Commerce would either need to convert the Malaysian data from square meter values to kilogram values or convert the respondents' data from per piece values to square meter values. On remand, Commerce has adequately explained why it cannot reasonably convert the reported kilograms to square meters. Commerce explains "the square meters to kilogram ratio that Risen calculated depends on the thickness of the glass consumed and will vary based on the thickness. Yet, the thickness of the glass imported into Malaysia during the POR is

unknown."[8] *Remand Results* at 6.[9] But Commerce fails to address why it cannot convert the respondents' raw data from per piece to square meters using the record evidence. Commerce acknowledges that both Jinko and Risen purchase glass on a per piece basis, *Remand Results* at 4 (citing Jinko DEQR at Exh. AD-9; Risen Sec. D Resp. at Exh. D-34), but focuses its analysis for why it chooses to reject the Malaysian data on Commerce's perceived inaccuracies with the conversion ratios. *Remand Results* at 5—6. Jinko and Risen converted their glass consumption to, and reported their glass consumption in, kilograms because they were requested to do so by Commerce. *Remand Results* at 4—5. As both Jinko and Risen have noted, the record contains the measurements of their glass so that their consumption can be converted to square meters, to match the Malaysian data which is reported in square meters only. *See* Jinko Solar's Redacted Case Br.: in the 8th Administrative Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China (A-570–979), PD 446, CD 494, bar code 4246241–01 (May 27, 2022) ("Jinko Case Br."). Thus, while Romanian HTS 7007.19.80 would appear to be specific and reliable on this record, so too would Malaysian HTS 7007.19.90. Given Commerce's preference to value all FOPs from the same primary surrogate country, *see* 19 C.F.R. § 351.408(c)(2), which here is Malaysia, and Commerce's failure to

[8] Risen argues it has demonstrated that it is Commerce's "normal practice" to, when needed, rely on a conversion ratio for the surrogate value based on the respondents' own data. Consol. Pl. Cmts. at 8—9 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2013*, 81 Fed. Reg. 46904 (Dep't Commerce 2016) and accompanying IDM at Cmt. 6). However, Commerce reasonably explains that using a conversion ratio based on respondents' own inputs "would not be appropriate here given that an important input characteristic that affects the conversion ratio (the thickness of the glass) varies between the respondents' inputs and the imported products." *Remand Results* at 32.

[9] Commerce addresses respondents' proposed conversion ratios to convert kilograms to square meters. *Remand Results* at 6—7 (explaining that both Jinko's and Risen's conversion ratios use calculations that include the thickness of the glass consumed, and there is no basis to conclude that the thickness of Jinko's and Risen's glass matches the thickness of the Malaysian glass). Jinko argues that all three conversion factors are based on a weighted average of a large set of glass data that span a range of thicknesses, and thus the conversion factor accounts for the variability of glass thickness. Pl. Cmts. at 6–7. Jinko also argues that the conversion factor based on the Romanian data is reliable because: (i) a standard deviation analysis of the Romanian HTS data showed that data points within one-half of the standard deviation on either side of the mean account for about 90 percent; and (ii) the outliers in the Romanian HTS data are for tiny shipments that account for merely 0.0012% of the total imported quantity of 11,868.44 tons. Pl. Cmts. at 9–11. Commerce adequately explains none of the three proposed conversion ratios are accurate to apply to the Malaysian HTS data because (i) the thickness of the solar glass imported into Malaysia during the period of review is unknown; and (ii) Jinko's conversion ratio has a wide variability in glass weight per square meter, and because of this variability, all three proposed conversion ratios are not sufficiently accurate. *Remand Results* at 7; Def. Resp. at 6–7.

address why it could not reasonably convert Jinko's and Risen's glass consumption data directly from per piece to square meters, Commerce's determination is unsupported by substantial evidence on this record, and is therefore remanded for further explanation consistent with this opinion.

II. Commerce's Air Freight Valuation For Exports Of Solar Glass

In its *Remand Results* Commerce selected Freightos data to value air freight because the Freightos data, is publicly available, represents a broad market average, is specific, and the details of the source of the Freightos data, unlike the International Air Transport Association (IATA) data, is on the public record. Final Decision Memo. at 43—44; *see also Remand Results* at 41. Commerce explained it did not value air freight using the IATA data because "almost none of the underlying data and information regarding IATA data collection are publicly available." Final Decision Memo. at 44. *Jinko I* remanded to Commerce to "further consider or explain how publicly available information on the confidential record fails to promote accuracy, fairness and predictability." *Jinko I*, 701 F. Supp. 3d at 1388. On remand, Commerce again selects Freightos data to value air freight. *Remand Results* at 40—41. Jinko argues "the totality of route specific Shanghai-Atlanta monthly air freight data was publicly disclosed," Pl. Cmts. at 22, all the IATA data available is on the record, and the IATA data is more robust than the Freightos data chosen by Commerce. Pl. Cmts. at 23—24. For the reasons that follow, Commerce's selection of the Freightos data is supported by substantial evidence on this record.

As discussed, as a matter of practice Commerce evaluates potential SV data by assessing whether it is specific to input, publicly available, contemporaneous with the period of review, and tax and duty exclusive. *See* Policy Bulletin 04.1. Commerce has, as a matter of practice, previously concluded that information on the confidential record can be considered publicly available under certain circumstances. For example, Commerce has indicated that it considers information publicly available where that information "has intentionally been made available, through paid subscription or otherwise, to the general public by its publisher." *Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from the People's Republic of China*, 84 ITADOC 56,761 (Dep't Commerce Oct. 23, 2019) (internal citations and quotations omitted). Conversely, Commerce "would consider information to be not publicly available in instances where only a select limited group is permitted to have access to this information by its

publisher." *Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from the People's Republic of China*, 84 ITADOC 56,761 (Dep't Commerce Oct. 23, 2019) (internal citations and quotations omitted). Similarly, Commerce has reiterated that "[w]e consider the appropriate indication of public availability to be whether any entity can obtain the data." *Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Laminated Woven Sacks from the People's Republic of China*, 73 ITADOC 35,639 (Dep't Commerce Jun. 24, 2008). Commerce has further stated that "at the very least, public availability should enable any interested party to obtain the same information." *Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Laminated Woven Sacks from the People's Republic of China*, 73 ITADOC 35,639 (Dep't Commerce Jun. 24, 2008); *but see Jiangsu Zhongji Lamination Materials Co., (HK)Ltd. v. United States*, 396 F. Supp. 3d 1334, 1352—53 (Ct. Int'l Trade 2019) (acknowledging Commerce's discretion to weigh publicly availability of data where there was no apparent challenge to the data being non-public data).

In its Final Decision Memo., Commerce stated that "the data were treated as proprietary information on the record of this review" implying that "underlying data and information regarding IATA data collection" was on the confidential record but not on the public record. Final Decision Memo. at 43. *Jinko I* remanded Commerce's determination for further explanation as to why information had to be on the public record to be publicly available if the information was available to the public to purchase. *Jinko I*, 701 F. Supp. 3d at 1387—88. The *Remand Results* and oral argument revealed that the information concerning the IATA data collection was absent from the record altogether, not merely absent from the public record. *Remand Results* at 18, 40—41; Oral Arg. Rec. at 1:15:40—1:16:20, Apr. 30, 2025, ECF No. 131 ("Oral Arg. Rec.") (Plaintiffs' counsel noting, "There is no back up data . . . The most granular data [IATA] provides is at the monthly level . . . there is no further breakdown). When questioned about information on the confidential record attached to the monthly averages, Plaintiffs' counsel indicated that much of that information was information from the prior POR, not source information from this review. *See* Oral Arg. Rec. at 1:14:00—1:16:00; 1:18:56—1:19:11.

It is reasonably discernible from the Final Decision Memo. and the *Remand Results* that Commerce's assertion that the back-up data was not on the public record shows that Commerce mistakenly believed the data on the confidential record which related to the prior POR, was the back-up data for this POR. Final Decision Memo. at 43;

Remand Results at 18, 40—41 ("The only public IATA information on the record is a monthly average of its rates."); *see also* Oral Arg. Rec. at 1:18:56—1:19:11 (Plaintiffs' counsel explaining that the business proprietary pages on the record are related to the prior POR and not the current POR in this review). Nonetheless, it is reasonably discernable that Commerce considered the availability of information concerning the source of the data critical in determining and assessing the reliability of the data. *See* Final Decision Memo. at 43—44; see also *Remand Results* at 19; 40— 41 (noting that the details supporting the Freightos data is publicly available). Further, it is also reasonably discernible that Commerce's preference for the Freightos data is not only based on its specificity, broad market average, and public availability, but also that the source data for the Freightos data renders the data reliable. *See* Final Decision Memo. at 43—44 (noting the Freightos data, and the details regarding the source of the data, are publicly available, and comprised of weekly rates from "the world's largest global database of multimodal freight rates, with more than 2 billion price points"). There is no information on either the public or confidential record that would provide the source data for IATA to detract from Commerce's determination. Oral Arg. Rec. at 1:15:30—1:15:58; *see also Remand Results* at 40—41. Therefore, Commerce's selection of Freightos data to value air freight is supported by substantial evidence on this record.

III. Commerce's Methodology For Calculating Facts Available With An Adverse Inference Rate

In calculating a rate using facts available with an adverse inference due to Risen's missing FOP data, Commerce created a formula based on a subset of data that Risen reported for its solar modules. *Remand Results* at 22–24; Def. Cmts. at 12–13. Commerce did not use the highest consumption quantity, or a ratio based on a consumption quantity or group of consumption quantities that was reported for a particular input for any CONNUM, as a substitute for the missing FOP inputs, because these options were "not sufficiently adverse." *Remand Results* at 26–27. Instead, Commerce calculated a consumption ratio for three categories of inputs using simple averages of the highest ratio for each item in each category, and multiplied each input ratio by the multiplicative inverse of the simple average input ratio.

Remand Results at 21—22.[10] *Jinko I* remanded to Commerce, concluding that Commerce's methodology was contrary to law because the statute required Commerce to select among the facts available and, even if Commerce had derived facts to select from the record, Commerce needed to explain why its methodology was reasonable. *Jinko I*, 701 F. Supp. 3d at 1396—97. On remand, Commerce contends that it derived facts from the record using calculations, explains its methodology, and contends that its methodology is reasonable. *Remand Results* at 21—27, 41—43. Risen argues that: (a) Commerce's methodology is unsupported by the record and contrary to law, and (b) Commerce is unfairly penalizing Risen by applying an even more adverse rate when Risen is powerless to compel its suppliers to cooperate with Commerce's requests.[11] *See* Consol. Pl. Cmts. at 15–18. For the following reasons, Commerce's decision to apply its

[10] Commerce explained that it

> calculated: (1) a simple average of all the input ratios for all the inputs (i.e., which include direct materials, direct and indirect labor, electricity, gas, and water) that were used to produce solar modules (including, where applicable, input ratios for inputs, other than solar cells, that were used to produce components in the solar module); (2) another simple average of all the input ratios for all the inputs (i.e., which include direct materials, direct and indirect labor, electricity, gas, and water) that were used to produce solar cells; and (3) a third simple average of all the input ratios for all the material inputs that were used in packing solar modules. Commerce then multiplied each reported per-unit consumption quantity by the multiplicative inverse of the applicable simple average input ratio (i.e., 1 divided by the applicable simple average input ratio) to increase all the reported consumption quantities as an adverse inference.

Remand Results at 22.

[11] Risen's argument that the Court should limit Commerce's discretion because its suppliers were uncooperative while it was not, is misplaced for several reasons. First, this Court has already found that Risen was uncooperative. *Jinko I*, 701 F. Supp. 3d at 1392—95 (concluding that Risen did not cooperate because it did not use its maximum efforts to secure the needed information). Thus, the use of an adverse inference here is authorized, not by 19 U.S.C. § 1677e(a), but rather by 19 U.S.C. § 1677e(b). *Jinko I*, 701 F. Supp. 3d at 1392—95; *compare Mueller Comercial de Mexico, S. de R.L. De C.V. v. United States*, 753 F.3d 1227, 1232—36 (Fed. Cir. 2014) (holding that Commerce may incorporate an adverse inference under Section 1677e(a) in calculating a cooperative respondent's margin, if doing so will yield an accurate rate, promote cooperation, and thwart duty evasion); *see also Canadian Solar Int'l Ltd. v. United States*, 415 F. Supp. 3d 1326, 1333 (Ct. Int'l Trade 2019). Second, Risen misreads the way in which Commerce employs *SKF USA Inc. v. United States*, 29 C.I.T. 969, 970 (Ct. Int'l Trade 2005) ("*SKF*"), the case on which Commerce relies upon in its remand. In its *Remand Results* Commerce invokes *SKF*, which is not binding on this Court in any event, for the proposition that Commerce has discretion in calculating an adverse inference. *Remand Results* at 21. Further as *SKF* points out, Commerce has discretion in calculating an adverse inference, but it does not, as Risen suggests, differentiate between uncooperative respondents who fail to supply their own information and those that fail to supply their unaffiliated supplier's information. Consol. Pl. Cmts. at 16. Risen is correct that *SKF* "reiterates that the statute must not impose, punitive . . . margins." Consol. Pl. Cmts. at 16 (citing *SKF*, 29 C.I.T. at 1336). However, the non-punitive nature of Section 1677e(b) makes clear that Commerce does not punish parties by evaluating behavior, rather it serves to encourage cooperation by employing an adverse inference derived from record evidence. *See* 19 U.S.C. § 1677e(b)(2).

alternative methodology is remanded as contrary to law and unsupported by substantial evidence.

The legal framework for using facts otherwise available when information requested by Commerce is withheld or unavailable is set forth in 19 U.S.C. § 1677e.

Section 1677e(a) provides:

(a) In general

If--

(1) necessary information is not available on the record, or

(2) an interested party or any other person--

(A) withholds information that has been requested by the administering authority or the Commission under this subtitle,

(B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 1677m of this title,

(C) significantly impedes a proceeding under this subtitle, or

(D) provides such information but the information cannot be verified as provided in section 1677m(i) of this title, the administering authority and the Commission shall, subject to section 1677m(d) of this title, use the facts otherwise available in reaching the applicable determination under this subtitle.

19 U.S.C. § 1677e(a) (emphasis added). That is, Section 1677e states, inter alia, that if "necessary information is not available on the record," Commerce shall "use the facts otherwise available." 19 U.S.C. § 1677e(a). Accordingly, in Section 1677e(a) the phrase "use the facts otherwise available" requires Commerce to look to the record for facts, which can be substituted for the missing information. *See* 19 U.S.C. § 1677e(a). Section 1677e(b)(1)(A) provides that if an interested party does not comply with a request for information, then Commerce "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." 19 U.S.C. § 1677e(b)(1)(A). Consequently, 19 U.S.C. § 1677e(a)-(b) requires that the source of the information, whether as facts otherwise available or facts otherwise available with an adverse inference, must be facts from the record. Commerce cannot select facts not on the record, as doing so would be contrary to law. *See* 19 U.S.C. § 1677e(a)-(b).

Nonetheless, Commerce has some discretion in calculating a rate using adverse inferences. Section 1677e(b) states that an adverse inference may include information "derived" from four potential sources of information:

> (2) Potential sources of information for adverse inferences
>
> An adverse inference under paragraph (1)(A) may include reliance on information derived from--
>
> (A) the petition,
>
> (B) a final determination in the investigation under this subtitle,
>
> (C) any previous review under section 1675 of this title or determination under section 1675b of this title, or
>
> (D) any other information placed on the record.

19 U.S.C. § 1677e(b)(2). The meaning of the word "derived" in Section 1677e(b)(2) is "to take, receive, or obtain especially from a specified source," *Derive*, MerrianWebster's Dictionary, https://www.merriam-webster.com/dictionary/derive (Last visited May 27, 2025); "to trace from a source or origin," *Derive*, https://www.dictionary.com/browse/derive (Last visited May 27, 2025). Further, the Statement of Administration Action for the Uruguay Round Agreements Act ("SAA") explains that "using" record information to make an adverse inference is permissible. SAA, H.R. Rep. No. 103–316 (1994), as reprinted in 1994 U.S.C.C.A.N. 4040, 4199 ("SAA") ("Information used to make an adverse inference" includes "the petition, other information placed on the record, or determinations in a prior proceeding regarding the subject merchandise"). Thus, both the statute and the SAA reveal that Commerce can use an adverse inference by relying on "information derived from" the record, but Commerce cannot create information not rooted in record evidence. Deriving information requires a logical connection between the source, i.e., the record evidence, and the result. This logical connection furthers the purpose of Section 1677e(b), i.e., to apply an adverse inference, not to punish a respondent but, to ensure "the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." SAA at 4199. The framework provides that the rate will be "a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-compliance." *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) ("De Cecco").

Further, when using an adverse inference Commerce must act reasonably. *See Vincentin S.A.I.C. v. United States*, 404 F. Supp. 3d 1323, 1342 (Ct. Int'l Trade 2019) (noting that even though Commerce

has discretion to select a calculation methodology in a determination, that methodology must nonetheless be reasonable), aff'd, 42 F.4th 1372, 1382 (Fed. Cir. 2022). Commerce must explain how the facts it selects based on its use of an adverse inference prioritizes cooperation, not punishment. *Bio-Lab, Inc. v. United States*, 435 F. Supp. 3d 1361, 1368 (Ct. Int'l Trade 2020); *De Cecco*, 216 F.3d at 1032; *Gallant Ocean (Thailand) Co., Ltd. v. United States*, 602 F.3d 1319, 1323 (Fed. Cir. 2010).

In *Jinko I* the Court concluded that Commerce's determination was contrary to law and unsupported by substantial evidence. *Jinko I*, 701 F. Supp. 3d at 1396. The Court reasoned that "Commerce failed to select among the facts available" and had instead created new facts. *Jinko I*, 701 F. Supp. 3d at 1396. Further, the Court explained even if the statute were capacious enough to allow Commerce to derive new facts from the facts on the record, Commerce would need to explain how it derived those facts and why its methodology was reasonable. *Jinko I*, 701 F. Supp. 3d at 1396—97.

On remand, Commerce explains its methodology but fails to show how its derivation is logically related to record information, and therefore in accordance with law, or supported by substantial evidence. Commerce explains the mechanics of its methodology. Commerce starts with Risen's consumption data and derives a consumption rate for each input using facts on the record.[12] *Remand Results* at 21—22. Commerce then derives three separate ratios by placing all the inputs into three categories and calculating the simple average of the ratios for all the inputs in each category.[13] *Remand Results* at 22. One might question why creating the three categories is reasonable, *see e.g.*, Consol. Pl. Cmts. at 16—19, and therefore whether the determination is supported by substantial evidence; however, up to this

[12] Commerce calculated a ratio for each monocrystalline solar module CONNUM by dividing the per-unit consumption quantity of the input reported for the CONNUM by the highest per-unit consumption quantity reported for that input for any monocrystalline solar module. *Remand Results* at 22. Commerce then averaged all the CONNUM-specific ratios that it calculated for that input to derive one single ratio for the input (the input ratio). *Remand Results* at 22.

[13] Commerce calculated: (1) a simple average of all the input ratios for all the inputs (i.e., which include direct materials, direct and indirect labor, electricity, gas, and water) that were used to produce solar modules (including, where applicable, input ratios for inputs, other than solar cells, that were used to produce components in the solar module), *Remand Results* at 22, (2) another simple average of all the input ratios for all the inputs (i.e., which include direct materials, direct and indirect labor, electricity, gas, and water) that were used to produce solar cells; *Remand Results* at 22, and (3) a third simple average of all the input ratios for all the material inputs that were used in packing solar modules. *Remand Results* at 22.

point in its calculations Commerce is using information on the record in accordance with the statute.[14]

However, finding that the resulting ratios were not "sufficiently adverse[,]" Commerce multiplied each reported per-unit consumption quantity by the "multiplicative inverse of the applicable simple average input ratio[,]" meaning it divided the number 1 by the simple average input ratio to create a multiplicative inverse and then multiplied each input ratio by the multiplicative inverse of the simple average input ratio. *Remand Results* at 22. It is at this step of Commerce's methodology, creating a multiplicative inverse, where Commerce stops relying on "information derived from" the record, and starts creating facts without the requisite link to the evidence on the record. *Id.* at 21—22.

Specifically, Commerce acts contrary to law when it creates the "multiplicative inverse" to use in its calculations. The multiplicative inverse is the number 1 divided by the simple average input ratios that Commerce calculated for the three input categories. *Id.* at 22. Thus, it is a number that has been created by Commerce as the number 1 is not record evidence, nor is it derived from record evidence.[15] Commerce multiplies each reported per-unit consumption quantity the multiplicative inverse to "increase all the reported consumption quantities as an adverse inference." *Id.* at 22—23.

Commerce offers no explanation as to the connection, if any exists, between the multiplicative inverse and the facts on the record to argue its final calculation is derived from record evidence. That Commerce creates a variable by using calculated consumption ratios is of no moment. Commerce could have decided to multiply the ratio by the

[14] Risen contends that Commerce "should calculate individual adjustment factors as it had done in the past" to promote accuracy. Risen Comments on Draft Remand Results at 15, bar code 4606003–01 (Jul. 30, 2024); Consol. Pl. Cmts. at 17. It appears that Commerce decided not to calculate individual adjustment factors because it believes doing so would not have created a rate with an incentive for cooperation. *See Remand Results* at 26—27 (explaining that using individual inputs, not grouped together, would have essentially resulted in applying a rate using facts otherwise available without an adverse inference). As discussed more fully below, Commerce does not explain why this choice is reasonable on this record. Although Commerce explains its reasoning for grouping the input ratios by category rather than using input-specific ratios, or creating one simple average input ratio, it does not explain why the input specific ratios were not sufficiently adverse. *See Remand Results* at 24—25 (stating input-specific ratios were not "sufficiently" adverse and explaining "calculating one simple average input ratio for all three items (solar cells, solar modules, and packing) would have inappropriately skewed the adverse adjustment multiplier for solar cells and solar modules because of the disproportionately [[ ]] effect of the [[ ]] packing input ratio compared to the relative insignificance of the packing FOP").

[15] Additionally, Commerce says "the methodology described above promotes accuracy because Commerce relied on facts otherwise available that are specific to Risen, namely Risen's FOP consumption quantities, to derive the adverse inference multipliers for Risen." *Remand Results* at 25. However, Commerce uses the number 1 to create the multiplicative inverse. The number 1 is not on the record and is not specific to Risen.

numerical value of the last digit of the ratio, it could have multiplied the ratio by the number of inputs, it could have multiplied the ratio by a random number. Each option, if lacking a logical connection to the facts on the record, would be contrary to law.

The examples Commerce gives to support its approach illustrate that here Commerce is not relying on "information derived from" the record, but rather creating facts. *See Remand Results* at 41—43. Commerce cites several determinations to support its view that it has acted in accordance with law. *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 Fed. Reg. 17,422 (Dep't Commerce Mar. 26, 2012) *("Bottom Mount Refrigerator Freezers from Mexico")*; *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 Fed. Reg. 17,413 (Dep't Commerce Mar. 26, 2012) ("*Bottom Mount Refrigerator Freezers from Korea*"), and accompanying IDM at Comment 12; *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 Fed. Reg. 1,982 (Dep't Commerce Jan. 17, 2007) ("*Polyethylene Bags from Thailand*"), and accompanying IDM at Comment 2; *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 Fed. Reg. 9,508 (Dep't Commerce Mar. 2, 2007) ("*Certain Activated Carbon from China*"), and accompanying IDM at Comment 20. However, in each of these examples Commerce used record evidence to derive information.[16]

It is possible that Commerce's use of the multiplicative inverse may be its attempt at adding a "built-in increase intended as a deterrent to non-compliance." *De Cecco*, 216 F.3d at 1032. If Commerce's use of the multiplicative inverse is meant to build in an increase as contemplated by *De Cecco*, Commerce must explain that it is doing so and further explain why that built in increase should be considered a derivation from record evidence, and therefore in accordance with the statute. As Commerce currently explains its method for calculating

[16] In *Bottom Mount Refrigerator Freezers from Mexico*, Commerce Determined an average rebate percentage based on data in the respondent's sales listing, using that number as a floor. *Bottom Mount Refrigerator Freezers from Mexico* at cmt. 4. In*Bottom Mount Refrigerator Freezers from Korea*, Commerce used the lowest sell-out percentage observed at verification, which was also stated in the verification report. *Bottom Mount Refrigerator Freezers from Korea* at cmt. 10. In *Polyethylene Bags from Thailand*, Commerce applied a "total AFA" rate to the respondent. *Polyethylene Bags from Thailand* at cmt. 10. In *Certain Activated Carbon from China*, Commerce applied a "total AFA" rate to the respondent. *Certain Activated Carbon from China* at cmt. 27.

an adverse inference, the Court does not view it as permitted by the statute.

Additionally, although the statute permits Commerce to rely on information derived from the record when employing an adverse inference, Commerce's determinations must still be supported by substantial evidence, *i.e.*, they must be reasonable on this record. *See* 19 U.S.C. § 1516a(b)(1)(B)(i); *Gallant Ocean*, 602 F.3d at 1325. Commerce fails to explain how its determination is reasonable on this record. As a preliminary matter, Commerce asserts that the input-specific ratios resulted in an increase that was not a "sufficiently adverse inference," *Remand Results* at 23, however Commerce's use of the word sufficiently is irrelevant. The word "sufficiently" is not in the statute; the statute references an inference that is "adverse." *See* 19 U.S.C. § 1677e(b). However, it is reasonably discernible that when Commerce uses the phrase "sufficiently adverse," it simply means the rate is not adverse.[17] It would appear that Commerce considers the missing information indicative of rates higher than those calculated using the highest consumption quantity that was reported for a particular input for any CONNUM on the record. *Remand Results* at 26—27 (explaining that simply using the highest consumption quantity that was reported for a particular input for any CONNUM on the record would not produce an adverse rate); *see also* SAA at 4199.

However, Commerce does not explain why it believes the rate it calculated using the highest consumption quantity that was reported for a particular input for any CONNUM would not be adverse. Commerce rejects the four percent rate increase in the reported per unit consumption quantities as not adverse in favor of a fifteen percent inference rate increase in the reported per unit consumption quantities without any explanation as to why the four percent rate increase in the reported per unit consumption quantities is not adverse. *See Remand Results* at 23—24. Further, Commerce does not explain why the rate it applies, which imposes a fifteen percent rate increase in the reported per unit consumption quantities is reasonable. *Id.* at 24—27. Thus, even if Commerce calculated its rate based on an adverse inference by deriving information from the record, its determination would still be unsupported by substantial evidence. Commerce must explain why its determination is reasonable, specifically why: (1) missing information is indicative of rates higher than those

[17] If during the review, Commerce believed the rate was not adverse it could have requested additional information from the parties, given the parties an opportunity to comment on the new information, and calculated a rate using that new information. Additionally, Commerce in a remand may reopen the record to ask for additional information. *See, e.g.*, *Tropicana Prods., Inc. v. United States*, 484 F. Supp. 2d 1330, 1354 (2007) ("If it finds it necessary or efficacious, the Commission may reopen the record").

calculated using the highest consumption quantity that was reported for a particular input for any CONNUM on the record, (2) the rate it chose is reasonable.

IV. Recalculation of the Separate Rate.

Jinko I remanded to Commerce to recalculate the separate rate for BYD and JA Solar. *Jinko I*, 701 F. Supp. 3d at 1397. Commerce argues that because it did not make any changes to the dumping margins for Jinko and Risen there is "no basis to change the separate rate that Commerce assigned to JA Solar and BYD." *Remand Results* at 27. Plaintiff-Intervenors argue that the margins determined for Jinko and Risen are not supported by substantial evidence, and therefore the separate rate calculation should be remanded to Commerce again to make revisions consistent with its redetermination. BYD Cmts. at 7; JA Solar Cmts. at 1. On remand, Commerce will necessarily reconsider whether it must recalculate the separate rate for JA Solar and BYD following its redetermination.

CONCLUSION

For the foregoing reasons, Commerce's redetermination with respect to its decision to use Freightos data to value air freight is sustained as it is supported by substantial evidence on the record and in accordance with the law and this Court's remand order. Commerce's redetermination with respect to its valuation of solar glass and its methodology for calculating facts available with an adverse inference are remanded for further explanation or consideration consistent with this opinion. In light of the foregoing, it is

ORDERED that Commerce's valuation of air freight is sustained; and it is further

ORDERED that Commerce's determination with respect to its valuation of solar glass under Romanian HTS 7007.19.80 is remanded for reconsideration consistent with this opinion; and it is further

ORDERED that Commerce's methodology for calculating facts available with an adverse inference is remanded for reconsideration consistent with this opinion; and it is further

ORDERED that Commerce's determination of the review specific rate applicable to JA Solar and BYD is remanded for reconsideration consistent with this opinion; and it is further

ORDERED that Commerce shall file its redetermination with the Court within 90 days of this date; and it is further

ORDERED that the parties shall have 30 days to file comments on the redetermination; and it is further

ORDERED that the parties shall have 30 days to file their replies to the comments on the redetermination; and it is further

ORDERED that the parties shall file the joint appendix, including the entire confidential record, within 14 days after the filing of replies to the comments on the redetermination; and it is further

ORDERED that Commerce shall file the administrative record within 14 days of the date of filing its redetermination.

Dated: May 30, 2025
New York, New York

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

Slip Op. 25–72

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC, Plaintiff, v. UNITED STATES, Defendant, and CHENG SHIN RUBBER U.S.A. INC., Defendant-Intervenor.

Before: Jennifer Choe-Groves, Judge
Court No. 24–00165

[Remanding the U.S. Department of Commerce's final scope ruling on Cheng Shin's temporary-use spare tire.]

Dated: June 9, 2025

Roger B. Schagrin, *Nicholas J. Birch*, and *Alessandra A. Palazzolo*, Schagrin Associates, of Washington, D.C., for Plaintiff United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC. *Christopher T. Cloutier*, *Elizabeth J. Drake*, *Jeffrey D. Gerrish*, *Justin M. Neuman*, *Luke A. Meisner*, *Nicholas Phillips*, *Saad Y.* Chalchal, and *William A. Fennell* also appeared.

Franklin E. White, Jr., Assistant Director, and *Sosun Bae*, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant United States. With them on the brief were *Brett A. Shumate*, Acting Assistant Attorney General, and *Patricia M. McCarthy*, Director. Of counsel on the brief was *Danielle V. Cossey*, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C. *Isabelle Aubrun* and *Shanni Alon* also appeared.

Jeffrey M. Winton, *Michael J. Chapman*, *Amrietha Nellan*, and *Vi N. Mai*, Winton & Chapman PLLC, of Washington, D.C., for Defendant-Intervenor Cheng Shin Rubber U.S.A. Inc.

OPINION AND ORDER

Choe-Groves, Judge:

Plaintiff United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("Plaintiff" or "United Steel") brought this action challenging the final scope ruling on temporary-use spare tires ("T-type tires") imported by Cheng Shin Rubber Industry Co. Ltd., issued by the U.S. Department of Commerce ("Commerce"). Summons, ECF No. 1; Compl. ¶ 1, ECF No. 6.

Commerce determined that Cheng Shin's T-type tire was not covered by the scope of the antidumping duty order on passenger vehicles and light truck tires imported from Taiwan. Final Scope Ruling on the Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from Taiwan: Request by Cheng Shin Rubber Ind. Co.

Ltd., A-583–869 (Aug. 5, 2024) (Final Scope Ruling), PR 15[1]; *see also Passenger Vehicle and Light Truck Tires From the Republic of Korea, Taiwan, and Thailand* ("*Order*"), 86 Fed. Reg. 38,011 (Dep't of Commerce July 19, 2021) (antidumping duty orders and amended final affirmative antidumping duty determination for Thailand).

Before the Court is Plaintiff's Rule 56.2 Motion for Judgment on the Agency Record ("Plaintiff's Motion"), in which Plaintiff argues that Commerce erred in finding that Cheng Shin's T-type tires were not covered by the Order. Pl.'s R. 56.2 Mot. J. Agency R. ("Pl.'s Mot.") & Pl.'s Mem. Supp. Pl.'s Mot. J. Agency R. ("Pl.'s Br."), ECF Nos. 22, 23. Defendant United States ("Defendant" or "Government") and Defendant-Intervenor Cheng Shin Rubber U.S.A. Inc. ("Defendant-Intervenor" or "Cheng Shin") oppose Plaintiff's Motion. Def.'s Resp. Pl.'s Mot. J. Agency R. ("Def.'s Br."), ECF Nos. 26, 27; Br. Def.-Interv. Cheng Shin Resp. Pl.'s R. 56.2 Mot. J. Agency R. ("Def.-Interv.'s Br."), ECF Nos. 29, 30. Plaintiff filed a reply brief. Pl.'s Reply Br., ECF No. 31. For the following reasons, the Court remands Commerce's Final Scope Ruling.

ISSUES PRESENTED

The Court reviews the following issues:

1. Whether United Steel failed to exhaust its administrative remedies before challenging the final scope ruling in this Court.
2. Whether Commerce abused its discretion when it declined to issue a preliminary scope ruling.
3. Whether Commerce's interpretation of the scope of the *Order* changed the meaning of the *Order* and was otherwise not in accordance with law.
4. Whether Commerce failed to consider evidence on the record that showed Cheng Shin's T-type tires fit passenger vehicles or light trucks.

BACKGROUND

On July 19, 2021, Commerce issued an antidumping duty order on passenger vehicle and light truck tires from the Republic of Korea, Taiwan, and Thailand. *Order*, 86 Fed. Reg. at 38,011. The *Order* covered new passenger and light truck tires that "have, at the time of importation, the symbol 'DOT' on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards." *Id.* at 38,012.

[1] Citations to the administrative record reflect the public record ("PR"), ECF No. 33.

The *Order* specified that tires with "P" and "LT" prefixes and tires with "LT" suffix are expressly covered by the scope of the *Order*, regardless of their intended use.[2] *Id.* The *Order* also explained that:

> all tires that lack a "P" or "LT" prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that fits passenger cars or light trucks. Sizes that fit passenger cars and light trucks include, but are not limited to, the numerical size designations listed in the passenger car section or light truck section of the Tire and Rim Association Year Book, as updated annually. The scope includes all tires that are of a size that fits passenger cars or light trucks, unless the tire falls within one of the specific exclusions set out below.

Id.

Cheng Shin requested a scope ruling confirming that its T-type tires were outside the scope of the *Order*. Cheng Shin's Request for Scope Ruling ("Scope Ruling Request") at 2–3, PR 1–2. In its request, Cheng Shin explained to Commerce that its "T-type tire is a 'mini' spare tire that does not meet the size or regulatory requirements for regular-service on passenger cars or light trucks." *Id.* at 4.

Commerce initiated a scope inquiry on April 11, 2024 and set the deadline for interested parties to submit comments for May 13, 2024. Initiation of Cheng Shin Scope Inquiry, PR 3; *Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings*, 89 Fed. Reg. 35,796 (Dep't of Commerce May 2, 2024). United Steel filed its entry of appearance on May 6, 2024. Entry of Appearance, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, PR 6.

The May 13, 2024 deadline for interested parties to submit comments on the scope proceeding lapsed without comment from United Steel. On June 17, 2024, United Steel requested that Commerce issue a preliminary determination on the scope ruling so that the Parties would have an opportunity to review and comment on the proposed reasoning and determination. Petitioner's Request for a Preliminary Determination, PR 12. Commerce declined to issue a preliminary determination and instead issued its Final Scope Ruling on August 6,

[2] The "P" prefix "[i]dentifies a tire intended primarily for service on passenger cars[,]" and the "LT" prefix "[i]dentifies a tire intended primarily for service on light trucks." *Order*, 86 Fed. Reg. at 38,012. The "LT" suffix "[i]dentifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service." *Id.*

2024. Final Scope Ruling at 1, 8–9. In its Final Scope Ruling, Commerce determined that Cheng Shin's T-type tires were not within the scope of the Order. *Id.* at 7–9.

United Steel filed its Complaint in this Court on September 4, 2024. Compl. In its Complaint, United Steel challenges Commerce's decision to not issue a preliminary determination and Commerce's determination that Cheng Shin's T-type tires are not within the scope of the Order. *Id.* at ¶¶ 16–26. Cheng Shin filed a Motion to Intervene, pursuant to USCIT Rule 24, which this Court granted after finding that Cheng Shin is an interested party to this proceeding. Def.-Interv.'s Unopposed Mot. Intervene, ECF No. 13; Order (Oct. 11, 2024) ECF No. 19.

United Steel filed its Motion for Judgment on the Agency Record pursuant to USCIT Rule 56.2 on December 10, 2024. Pl.'s Mot. The Government opposed United Steel's Motion. Def.'s Br. Cheng Shin responded in opposition to United Steel's Motion. Def.-Interv.'s Br. United Steel filed a single reply addressing both the Government's and Cheng Shin's opposition. Pl.'s Reply. The Parties appeared before this Court for oral argument on May 7, 2025. Oral Arg. (May 7, 2025), ECF No. 36.

JURISDICTION AND STANDARD OF REVIEW

The U.S. Court of International Trade has jurisdiction pursuant to 19 U.S.C. § 1516a(a)(2)(B)(vi) and 28 U.S.C. § 1581(c), which grant the Court authority to review actions contesting the final determination of an administrative authority as to whether a particular type of merchandise falls within the scope of an antidumping duty order. The Court shall hold unlawful any determination 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).

DISCUSSION

I. Exhaustion of Administrative Remedies

The Government and Cheng Shin aver that United Steel failed to exhaust its administrative remedies in the proceeding below. Def.'s Br. at 15–17; Def.-Interv.'s Br. at 5–17. The Government argues that United Steel should have raised its argument explaining why Cheng Shin's tires fell within the scope of the *Order* in response to Cheng Shin's request for a scope ruling. Def.'s Br. at 15–16. The Government explains that because Commerce is not required to make a preliminary ruling in each proceeding, United Steel should have known that responding to Cheng Shin's request for a scope ruling may have been

its only opportunity to raise an argument at the administrative level. *Id.* at 15 n.5.

Cheng Shin avers that United Steel "was afforded multiple opportunities to submit comments during the underlying administrative proceeding but failed to raise any of these purported issues with Cheng Shin's scope ruling request within the prescribed timeframe." Def.-Interv.'s Br. at 6. Similar to the Government's argument, Cheng Shin explains that United Steel should have presented its argument as a comment in response to Cheng Shin's request for a scope ruling. *Id.* at 6–7. Cheng Shin further explains that United Steel could have submitted comments prior to Commerce's initiation of its inquiry or at any time prior to Commerce's issuance of a determination. *Id.* at 8.

Pursuant to 28 U.S.C. § 2637, this Court "shall, where appropriate, require the exhaustion of administrative remedies." 28 U.S.C. § 2637(d). The Court "generally takes a 'strict view' of the requirement that parties exhaust their administrative remedies[.]" *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1381 (Fed. Cir. 2013) (quoting *Corus Staal BV v. United States*, 502 F.3d 1370, 1379 (Fed. Cir. 2007)).

There are limited exceptions to the exhaustion requirement. *Pakfood Pub. Co. v. United States*, 34 CIT 1122, 1145–47, 724 F. Supp. 2d 1327, 1351–52 (2010). The court has waived exhaustion in cases "where it would have been futile for the party to raise its argument at the administrative level" and where the record shows that "the agency in fact thoroughly considered the issue in question." *Id.* at 1145, 724 F. Supp. 2d at 1351. The U.S. Court of Appeals for the Federal Circuit has found it appropriate to waive exhaustion "where the issue for the court is a 'pure question of law' that can be addressed without further factual development or further agency exercise of discretion." *Itochu Bldg. Prods. v. United States*, 733 F.3d 1140, 1146 (Fed. Cir. 2013).

When analyzing exhaustion, this Court may "assess the practical ability of a party to have its arguments considered by the administrative body." *Al Tech Specialty Steel Corp., v. United States*, 11 CIT 372, 377, 661 F. Supp. 1206, 1210 (1987). Because Commerce did not issue a preliminary determination, United Steel did not have an opportunity to raise its arguments in an administrative case brief for Commerce to consider. When Commerce issues a preliminary scope ruling, regulations provide clear guidance on when and how interested parties should submit arguments to the agency. 19 C.F.R. § 351.225(f). Commerce declined to issue a preliminary scope determination, so it did not establish a "schedule for the filing of scope com-

ments and rebuttal comments," *id.* § 351.225(f)(4), and none of the regulatory timeframes governing the submission of administrative case briefs under 19 C.F.R. § 351.225(f) were triggered.

United Steel did not fail to exhaust its administrative remedies because there was no opportunity to submit an administrative case brief at the time. *See, e.g.*, *NEXTEEL Co. v. United States*, 47 CIT __, __, 676 F. Supp. 3d 1345, 1350 (2023) ("Because Commerce did not issue a draft of the Fourth Remand Redetermination on which SeAH could comment, SeAH could not have raised its arguments at the administrative level and therefore did not fail to exhaust its administrative remedies. Thus, SeAH's arguments are not barred by the doctrine of administrative exhaustion."); *Qingdao Taifa Grp. Co. v. United States*, 33 CIT 1090, 1092–93, 637 F. Supp. 2d 1231, 1236–37 (2009) (holding that "[a] party . . . may seek judicial review of an issue that it did not raise in a case brief if Commerce did not address the issue until its final decision, because in such a circumstance, the party would not have had a full and fair opportunity to raise the issue at the administrative level"); *China Steel Corp. v. United States*, 28 CIT 38, 59–60, 306 F. Supp. 2d 1291, 1310–11 (2004) (holding that exhaustion doctrine did not apply when the challenged Commerce position "was first pronounced in the agency's Final Determination," such that "[p]laintiff did not have the opportunity to present its objections . . . at the administrative level"); *Philipp Bros., Inc. v. United States*, 10 CIT 76, 78–80, 630 F. Supp. 1317, 1320–21 (1986) (holding that because Commerce did not address an issue until its final decision, plaintiff had no opportunity to raise the issue at the administrative level and exhaustion doctrine did not preclude judicial review). The Court concludes that United Steel did not waive its arguments before this Court.

II. Commerce Did Not Abuse its Discretion by Non-Issuance of a Preliminary Ruling

United Steel asserts that Commerce abused its discretion when it decided not to issue a preliminary determination because Cheng Shin's scope inquiry presented complex issues and arguments that would have been aided by a preliminary determination and subsequent comments from the Parties. Pl.'s Br. at 17–22. 19 C.F.R. § 351.225(g) states that Commerce "may" issue a preliminary scope ruling. *Id.* It does not require Commerce to do so. *See, e.g.*, *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171–72 (2016) ("Unlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement."). Second, when determining whether to issue a preliminary scope ruling, Commerce "may" consider the com-

plexity of the issues and arguments presented in the request for a scope ruling. 19 C.F.R. § 351.225(g).

Recently, Commerce modified its own regulations to improve the administration and enforcement of antidumping duty and countervailing duty laws. *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 Fed. Reg. 52,300 (Dep't of Commerce Sept. 20, 2021). In doing so, Commerce noted that it "does not issue a preliminary scope ruling in all scope inquiries." *Id.* at 52,317. Commerce explained that "it would be unreasonable to require Commerce to issue a preliminary scope ruling when the facts on the record are simple and clear enough[.]" *Id.*

The decision whether to mandate preliminary scope rulings rests within Commerce's discretion. *SeAH Steel Corp. v. United States*, 47 CIT __, __, 659 F. Supp. 3d 1318, 1324 (2023) ("Commerce has broad discretion to fashion its own rules of administrative procedure[.]"). The Court concludes that Commerce did not abuse its discretion by determining not to issue a preliminary scope ruling in this case.

III. Scope Language Interpretation

The descriptions of merchandise covered by the scope of an antidumping or countervailing duty order must be written in general terms, and questions may arise as to whether a particular product is included within the scope of an order. *See* 19 C.F.R. § 351.225(a). When such questions arise, Commerce's regulations direct it to issue scope rulings that clarify whether the product is in-scope. *Id.* Although there are no specific statutory provisions that govern Commerce's interpretation of the scope of an order, Commerce is guided by case law and agency regulations. *See Meridian Prods., LLC v. United States* ("*Meridian Prods.*"), 851 F.3d 1375, 1381 (Fed. Cir. 2017); 19 C.F.R. § 351.225.

Commerce's inquiry must begin with the relevant scope language. *See, e.g.*, *OMG, Inc. v. United States*, 972 F.3d 1358, 1363 (Fed. Cir. 2020). If the scope language is unambiguous, "the plain meaning of the language governs." *Id.* If the language is ambiguous, however, Commerce interprets the scope with the aid of the sources set forth in 19 C.F.R. § 351.225(k)(1). *Meridian Prods.*, 851 F.3d at 1382.

Commerce did not expressly state whether it determined the scope language to be ambiguous. Commerce explained that "pursuant to 19 [C.F.R. §] 351.225(k)(1), the language of the scope and prior scope determinations" were dispositive in its determination of whether Cheng Shin's T-type tires were covered by the *Order*. Final Scope Ruling at 7. Commerce noted that it did not analyze any (k)(2) sources in its analysis. *Id.*

The Court views the scope language as unambiguous, and the plain language of the *Order* governs. Examination of (k)(1) sources is unnecessary in this case due to the clear, unambiguous scope language. For spare tires such as Cheng Shin's "that lack a 'P' or 'LT' prefix or suffix in their sidewall markings," the plain language of the *Order* includes those tires as in-scope "regardless of their intended use, as long as the tire is of a size that fits passenger cars or light trucks." *Order*, 86 Fed. Reg. at 38,012. The plain language of the *Order* requires that inclusion in the scope of the *Order* hinges on the size of the tire and whether it "fits passenger cars or light trucks." *Id.*

It is well-established that "Commerce cannot 'interpret' an antidumping order so as to change the scope of th[e] order, nor can Commerce interpret an order in a manner contrary to its terms." *Eckstrom Indus., Inc. v. United States*, 254 F.3d 1068, 1072 (Fed. Cir. 2001). When a party challenges a scope determination, the Court must determine whether the scope of the order "contain[s] language that specifically includes the subject merchandise or may be reasonably interpreted to include it." *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1089 (Fed. Cir. 2002). The cornerstone of the Court's analysis rests on the language of the order. *Id.* at 1097.

In its scope ruling request, Cheng Shin argued that its tires should be considered outside the scope of the *Order* because the tires have a "T" designation as opposed to a "P" or "LT" designation; the size 155/60R18 is not listed in the TRA Year Book; and the tires did not meet the "regulatory requirements for regular-service on passenger cars or light trucks." Scope Ruling Request at 4, 7. Defendant argued similarly in its brief and at oral argument, asserting that the *Order* only covers tires that are for regular use. Def.'s Br. at 17; Oral Arg. at 31:01–29. The Court notes that the plain language of the *Order* covers all tires that fit passenger cars or light trucks, "regardless of their intended use." *Order*, 86 Fed. Reg. at 38,012. Under *Duferco*, the Court will not read in any limitation to the scope of an order when there is no language in the order that supports or could reasonably be read to support such limitation. 296 F.3d at 1097–98. Defendant and Defendant-Intervenor's scope interpretation reads in a new requirement of "regular use," which is improper because that term does not appear in the statutory language and is "belied by the terms of the Order itself." *Id.* (quoting *Eckstrom Indus., Inc.*, 254 F.3d at 1073).

The Court holds that Commerce's determination that the scope of the *Order* requires tires to be for regular use was not in accordance with law. The Court also holds that the plain language of the *Order* requires that spare tires shall be in scope if the tire is of a size that fits passenger cars or light trucks.

IV. Record Evidence

In its Final Scope Ruling, Commerce determined that "there is no evidence on the record that suggests [that] the tire in question is of a size that fits passenger cars and light trucks." Final Scope Ruling at 8. However, when recounting Cheng Shin's description of its merchandise, Commerce stated "that the T-type model is used exclusively as a temporary-use, spare tire." *Id.* at 7.

There is no dispute that Cheng Shin's spare tires are of a size that fit passenger cars because spare tires are meant to be used on passenger cars. Commerce's determination in this case turns on the assumption that the tires that fit passenger cars must be for *regular use*, not for temporary use as a spare tire. But as discussed earlier, the plain language of the *Order* does not mention "regular use" and only requires that tires in scope must be of a size that fit passenger cars. Commerce's determination that there is no evidence on the record that suggests that Cheng Shin's tires are of a size that fit passenger cars is not supported by substantial evidence.

Additionally, another document on the record is contrary to Commerce's determination; Cheng Shin submitted an invoice showing that its T-type tires were listed under the heading "CAR TIRES."[3] This document on the record suggests that Cheng Shin's product is for use as a spare tire that fits passenger cars. Commerce described the T-type tire as "a 'mini' spare tire that does not meet the size of regulatory requirements for regular-service on passenger cars or light trucks." *Id.* The *Order* does not mention that tires must be for "regular" use, only that the tires within scope must fit passenger cars. Because evidence on the record showed that Cheng Shin's spare tire was meant to be used on a car, and Commerce came to the opposite determination that there was no evidence on the record showing that Cheng Shin's tire was "of a size that fits passenger cars" as required by the *Order*, the Court holds that Commerce's determination was not supported by substantial evidence.

Commerce did not explain how this evidence showed that Cheng Shin's tires failed to fit on passenger cars or light trucks. Commerce also did not explain how any of the other evidence on the record failed to show that the subject merchandise did not fit passenger cars or light trucks. For example, also available to Commerce on the record were the physical characteristics of the tire, which included information such as the maximum speed of the tire, the load capacity, the rim size, etc.

[3] Initially, this attachment was submitted to the Court confidentially. Prior to oral argument, Parties agreed to designate the merchandise's description as public.

Neither the Government nor Cheng Shin dispute that the subject merchandise are car tires. Instead, their arguments focused on whether the evidence showed that the T-type tire met the size or regulatory requirement for regular service on passenger cars or light trucks. Because intended use is not properly considered under the language of the *Order*, these arguments are unpersuasive.

When making its determination, Commerce had before it record evidence showing physical characteristics, photographs, schematic drawings, construction details, a diagram of the production process, a public summary of physical characteristics, a commercial invoice, and the 2022 and 2023 TRA Year Books. Scope Ruling Request at Attachments 1, 3–7, 9, 11. Commerce failed to explain how any evidence supported its determination that Cheng Shin's tires do not fit passenger cars or light trucks. The Court holds that Commerce's determination was not in accordance with law and not supported by substantial evidence.

CONCLUSION

For the foregoing reasons, the Court remands the Final Scope Ruling on the Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from Taiwan: Request by Cheng Shin Rubber Ind. Co. Ltd., A-583–869 (Aug. 5, 2024).

Accordingly, it is hereby

ORDERED that the case will proceed according to the following schedule:

(1) Commerce shall file its remand determination on or before August 11, 2025;

(2) Commerce shall file the administrative record on or before August 25, 2025;

(3) Comments in opposition to the remand determination shall be filed on or before September 22, 2025;

(4) Comments in support of the remand determination shall be filed on or before October 20, 2025; and

(5) The joint appendix shall be filed on or before October 20, 2025.

Dated: June 9, 2025
New York, New York

/s/ Jennifer Choe-Groves
JENNIFER CHOE-GROVES, JUDGE

Slip Op. 25–73

UNITED STATES, Plaintiff, v. AEGIS SECURITY INSURANCE COMPANY, Defendant.

Before: Jane A. Restani, Judge
Court No. 22–00327

[Granting the defendant's motion for summary judgment because the government's action to recover on the Customs bond is barred by the statute of limitations and contracting principles.]

Dated: June 11, 2025

Beverly A. Farrell, U.S. Department of Justice, International Trade Field Office, of New York, NY, for the plaintiff the United States. With her on the brief was *Taylor Rene Bates*.

Jason Matthew Kenner, Sandler, Travis & Rosenberg, PA, of New York, NY, and *Jeffrey Mark Telep*, King & Spalding, LLP, of Washington, DC, for the defendant Aegis Security Insurance Company.

OPINION AND ORDER

Restani, Judge:

Before the court are cross-motions for summary judgment. Def.'s Mot. for Summ. J., ECF No. 30 (Oct. 21, 2024) ("Aegis MSJ"); Pl.'s Cross-Mot. for Summ. J., ECF No. 34 (Dec. 9, 2024) ("Gov. MSJ"). Plaintiff, the United States ("government"), seeks to recover unpaid antidumping duties and interest totaling $100,700 under a United States Customs and Border Protection ("Customs") bond from Aegis Security Insurance Company ("Aegis"). Gov. MSJ at 1, 32. Aegis asks the court to find that the government's action is barred because the government failed to issue the demand in a reasonable time and because the government failed to commence the action within the applicable six-year statute of limitations. Aegis MSJ at 11, 25. At issue is when the statute of limitations began to run and, separately, if Customs unreasonably delayed in issuing a demand to Aegis to collect on the bond. Two decisions of this court have held that Customs may not collect on such stale claims. For the reasons set forth below, the court agrees with the results of those matters and concludes that the government may not recover on the bond here.

BACKGROUND

There are no material facts in dispute in this case. Pl.'s Statement of Undisputed Material Facts at 1, ECF No. 36 (Dec. 10, 2024) ("Gov. SOF"); Def.'s Statement of Undisputed Material Facts at 1, ECF No. 30–1 (Oct. 21, 2024) ("Aegis SOF"). On October 20, 2003, Presstek Wood Technologies Inc. ("Presstek") imported honey from the People's

Republic of China ("China"). Gov. SOF ¶ 1; Aegis SOF ¶ 21. The imported product was subject to an antidumping duty order on honey from China issued by the Department of Commerce ("Commerce"). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey From the People's Republic of China*, 66 Fed. Reg. 63,670 (Dep't Commerce Dec. 10, 2001) ("*Honey Order*"); Gov. SOF ¶ 1; Aegis SOF ¶ 20. In its entry papers, Presstek declared that Wuhan Bee Healthy Ltd. ("Wuhan Bee") was the exporter, and that the entry was subject to antidumping duties at a rate of 183.8% *ad valorem*. Gov. SOF ¶ 2; Aegis SOF ¶ 31. Presstek executed a single transaction bond, underwritten by Aegis, to secure the duties, taxes, and charges owed. Aegis SOF ¶ 19; *see* Gov. SOF ¶¶ 3–4. At the time, a bond was permitted in lieu of a cash deposit of estimated duties in new shipper reviews.[1] By the terms of the bond, Aegis agreed to be jointly and severally liable to pay any duties, taxes, and subsequent charges demanded by Customs, up to the limit of liability of $100,700, regarding the subject entry imported by Presstek. Gov. SOF ¶¶ 4–5; Aegis SOF ¶ 19.

Commerce conducted an administrative review of the *Honey Order* for the time period of December 1, 2002, through November 30, 2003, which included the entry of honey made by Presstek. Compl. at ¶ 14, ECF No. 2 (Nov. 22, 2022); *see Honey From the People's Republic of China: Preliminary Results, Partial Recission, and Extension of Final Results of Second Antidumping Duty Administrative Review*, 69 Fed. Reg. 77,184 (Dep't Commerce Dec. 27, 2004). On September 19, 2008, following the conclusion of the administrative review and subsequent judicial review by the United States Court of International Trade, Commerce published the amended results of the administrative review. *Honey From the People's Republic of China: Notice of Amended Final Results Pursuant to Final Court Decision*, 73 Fed. Reg. 54,366, 54,367 (Dep't Commerce Sept. 19, 2008). In the amended results, Commerce calculated an antidumping duty rate of 101.48% *ad valorem*. *Id.* Presstek's antidumping duty liability was calculated to be $57,489.60. Gov. SOF ¶ 9; Aegis SOF ¶ 23. Customs failed to timely liquidate the subject entry of honey; thus, the subject entry was

[1] Normally, when an importer imports goods subject to an antidumping or countervailing duty order, the importer gives Customs a deposit representing the estimated amount of duties owed. *See* 19 U.S.C. § 1673e(a)(3). Congress briefly allowed new shippers to post bonds instead of cash deposits while undergoing a new shipper review. *See* 19 U.S.C. § 1675(a)(2)(B)(iii) (1994). Congress later eliminated the bond option for new shippers because the program allowed exporters to avoid paying duties by disappearing without paying the duties owed. Accordingly, the law permitting the bond program was suspended in 2006 and later revoked when the statute was amended in 2016. *See* Pension Protection Act of 2006, Pub. L. No. 109–280, § 1632, 120 Stat. 780 (2006); Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114–125, § 433, 130 Stat. 122, 171 (2016).

deemed liquidated on March 19, 2009, at the rate of duty, value, quantity, and amount of duty asserted at time of entry. Gov. SOF ¶ 10; Aegis SOF ¶¶ 29, 32; *see* 19 U.S.C. § 1504(d). Because Presstek had asserted at the time of entry that the honey was subject to antidumping duties at a rate of 183.8% *ad valorem*, Presstek's liability for antidumping duties for the subject entry became $100,634.18 as a result of the deemed liquidation, instead of the $57,489.60 found to be owing by Commerce. *See* Gov. SOF ¶¶ 9, 18; Aegis SOF ¶¶ 23, 31.

Over seven years passed. On November 25, 2016, Customs billed Presstek for the subject entry, which Presstek failed to pay. Gov. SOF ¶¶ 11–12; Aegis SOF ¶ 38. On February 6, 2017, Customs made its first payment demand on Aegis demanding the unpaid duties plus the interest that had accrued from the time the bill was issued to Presstek. Gov. SOF ¶ 13; Aegis SOF ¶ 39. Aegis filed a protest of Customs' demand on April 25, 2017, which Customs granted in part.[2] Gov. SOF ¶¶ 16–17; Aegis SOF ¶ 40. Almost two years later, on March 15, 2019, Customs issued a second bill to Presstek, which Presstek once again failed to pay. Gov. SOF ¶ 17; Aegis SOF ¶ 40. Customs made a second demand on Aegis on June 4, 2019. Gov. SOF ¶ 19; Aegis SOF ¶ 41. Aegis did not pay or protest the demand. Gov. SOF ¶¶ 20–21; Aegis SOF ¶ 42. On November 22, 2022, the government filed suit to recover the unpaid antidumping duties and interest.[3] *See* Summons, ECF No. 1 (Nov. 22, 2022).

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 1582(2). Summary judgment "shall [be granted] if the movant shows that 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).

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[2] On November 25, 2016, Customs attempted to reliquidate the entry at the antidumping duty rate consistent with Commerce's amended final results. Compl. ¶ 19; First Am. Ans. to Compl. ¶ 19, ECF No. 13 (Apr. 10, 2023) ("Am. Ans."). Presumably to preserve its statute of limitations defense, Aegis protested and argued in part that the entry had liquidated by operation of law on March 19, 2009, and that the attempted reliquidation on November 25, 2016, was contrary to law. Compl. ¶ 26; Am. Ans. ¶ 26. Customs granted the protest in part. Compl. ¶ 29; Am. Ans. ¶ 29.

[3] During this period of time, Aegis' reinsurer, Lincoln General Insurance Company ("LGIC"), became insolvent. Aegis SOF ¶¶ 17, 33; Resp. to Def.'s Statement of Facts ¶¶ 17, 33, ECF No. 35 (Dec. 10, 2024) ("Resp. to Def.'s SOF").

DISCUSSION

I. The Government Breached the Bond Contract by Failing to Issue the Demand in a Reasonable Time

Aegis argues that the government cannot recover on the bond because Customs failed to make its demand on Aegis within a reasonable time. Aegis MSJ at 25. Aegis contends that the bond contract contained an implied reasonableness requirement, and Customs breached the contract by failing to issue the bill within a reasonable time.[4] *Id.* The government responds that no reasonable time requirement applies to Customs' demand for payment because 19 C.F.R. § 113.62(a)(1)(ii) does not contain such a requirement. Gov. MSJ at 24–27; Pl.'s Reply at 11, ECF No. 46 (Mar. 20, 2025) ("Gov. Reply"). The government adds that even if the court applies a reasonableness standard, the government's delay in issuing the demand was reasonable because the objective of a Customs bond is to protect the revenue, meaning an unlimited duration is necessary to satisfy the contractual purpose.[5] Gov. Reply at 13. Last, the government argues that even if it did breach an implied reasonableness requirement in the bond

[4] Aegis also argues that the government would violate the Administrative Procedures Act if Customs was not bound by a reasonableness requirement because Customs would be acting arbitrarily and capriciously. Def. Resp. to Mot. and Reply in Support of Mot. for Summ. J. at 14–16, ECF No. 42 (Jan. 27, 2025) ("Aegis Reply"). Because the court finds that Customs was bound by a reasonableness requirement, the court does not reach this issue.

[5] The government also alleges that Aegis actually benefited from the delay because its liability is fixed at the face value of the bonds, meaning Aegis retained the benefit of the premium and the time-value of the money. Gov. Reply at 16–17. While interest may be capped at the face value of the bond under 19 U.S.C. § 1505, the government itself argues that Aegis is liable for interest pursuant to 19 U.S.C. § 580 (which provides for interest running from the date the bond becomes due) and post-judgment interest pursuant to 28 U.S.C. § 1961, neither of which are limited by the bond. Gov. MSJ at 1, 10. By the government's own reasoning, therefore, Aegis accrued or will accrue interest above the face value of the bond. Accordingly, the government's argument that Aegis somehow benefited from the government's delay fails.

contract, such a breach would not be material, meaning Aegis must still perform on the contract.[6] *Id.* at 15.

The bond at issue incorporated language from 19 C.F.R. § 113.62(a)(1)(ii) which requires the surety to "[p]ay, as demanded by [Customs], all additional duties, taxes, and charges subsequently found due, legally fixed, and imposed on any entry secured by this bond." Gov. MSJ at 9; Aegis MSJ at 23. Bond contracts incorporating 19 C.F.R. § 113.62 have a demand requirement but no express limitation on the time for demand. Like any contract, however, they are governed by the implied duty of good faith and fair dealing, which is inherent in every contract. *See Precision Pine & Timber, Inc. v. United States*, 596 F.3d 817, 828 (Fed. Cir. 2010) (citation omitted). "In essence, this duty requires a party to not interfere with another party's rights under the contract." *Id.* (citation omitted). The government's failure to fulfill this duty would constitute breach of contract. *Metcalf Const. Co. v. United States*, 742 F.3d 984, 990 (Fed. Cir. 2014); *see also* Restatement (Second) of Contracts § 205 cmt. d (1981) (stating potential breaches of the implied duty of good faith and fair dealing include "evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance"). By not making a timely demand, Customs failed to act diligently and allowed the contract to fall into no man's land where the parties' expectations could be thwarted easily.

[6] The government also argues that no time limit was contemplated by the bond. Gov. Reply at 11. The government analogizes to 19 U.S.C. § 1592 pursuant to which the government can recover revenue by suing up to five years after the discovery of a violation of the section. *Id.* (citing 19 U.S.C. § 1621). The government infers that because of the silence regarding a time limit in 19 U.S.C. § 1505(b), the statute that defines when the government's cause of action to sue on a Customs bond accrues, along with the use and terms of Customs bonds, the government is not bound by a timing requirement to issue a demand. *Id.* at 11–12. As the court discusses, a Customs bond is a contract. Based on contracting principles, a bond contract contains an implied reasonableness requirement. Accordingly, even if the parties did not "contemplate" a particular time limit by the bond, the parties were required to act reasonably. The government also argues that, at the time of contracting, the parties contemplated the statute of limitations running from the date of the demand because under 19 C.F.R § 24.3a, the surety would only receive notice that the importer had not made payment when a demand for payment was made on the surety via a "612 Report," which begins the 180-day deadline for the surety to protest. Gov. MSJ at 23; Oral Argument at 4:21. Assuming this regulation is part of the contract, the government's argument does not lead to the conclusion that the parties contemplated Customs waiting eight years to send the demand. Rather, it merely suggests that the parties understood the demand to play a role in Customs' collection efforts.

The court has characterized this duty as a reasonableness requirement; namely, Customs must issue the demand in a reasonable time.[7] *See United States v. Aegis Sec. Ins. Co.*, 693 F. Supp. 3d 1328, 1338 (CIT 2024) ("*Aegis I*") (citing *Nyhus v. Travel Mgmt. Corp.*, 466 F.2d 440, 452–53 (D.C. Cir. 1972) ("[A] party is not at liberty to stave off operation of the statute [of limitations] inordinately by failing to make demand" and "the time for demand is ordinarily a reasonable time.")); *see also United States v. Am. Home Assurance Co.*, 653 F. Supp. 3d 1277, 1294 (CIT 2023) ("*Am. Home*") ("Customs must act, and act reasonably, in pursuing its claims under a bond, like any prudent litigant."). In *Aegis I*, the court held that Customs' eight-year delay in issuing a demand was unreasonable. 693 F. Supp. 3d at 1339–40. In *Am. Home*, the court held that Customs' nearly eleven-year delay in issuing a demand was unreasonable. 653 F. Supp. 3d at 1293–95.

Here, the subject entry was deemed liquidated on March 19, 2009. Gov. SOF ¶ 10; Aegis SOF ¶ 32. Over seven years passed before Customs first billed Presstek on November 25, 2016. Gov. SOF ¶ 11; Aegis SOF ¶ 38. Almost eight years passed from the date of liquidation before Customs made its first demand on Aegis on February 6, 2017. *See* Gov. SOF ¶ 13; Aegis SOF ¶ 39. Aegis filed its protest of the demand on April 25, 2017, which Customs granted in part. Compl. ¶ 29; Am. Ans. ¶ 29. Customs then delayed another two years before issuing a second bill to Presstek on March 15, 2019, and making a second demand on Aegis on June 4, 2019. Gov. SOF ¶ 19; Aegis SOF ¶ 41. In total, over ten years passed between liquidation and the post-protest proceedings demand on Aegis. Customs delayed in issuing the bill because it had lost or misfiled the relevant documents for Presstek's entry, not because of any action by Aegis. Aegis SOF ¶ 29; Resp. to Def.'s SOF ¶ 29.

While there is no bright-line rule for what constitutes a reasonable time to make a demand, a nearly eight-year delay in issuing the first demand for no reason other than that Customs lost the relevant documents is both unreasonable and violates the duty of good faith and fair dealing. As the court has found repeatedly, the mere fact that the regulation does not include a time requirement for a demand does not mean that Customs is unbound by reason. If the court were to take the government's argument that Customs need not act reasonably to its logical conclusion, Customs could delay issuing a demand for decades while interest accrues and reinsurers may vanish, as

[7] The government is not a direct party or signatory to the bond at issue. Rather, it is a third-party beneficiary. Gov. MSJ at 27; Compl., Ex. B. This does not preclude the government from a reasonableness requirement. Namely, if the government seeks the benefit of the bond, it must act reasonably.

occurred here. *See supra* n.3. Such a system would be illogical and highlights the very reason why the implied duty of good faith and fair dealing is inherent in all contracts: to prevent such unreasonable behavior. The government has failed to show that the nearly eight-year delay in issuing the first demand—and the ten-year delay in issuing the second demand—was reasonable. Accordingly, the government breached the bond contract and cannot recover under that contract.[8]

II. The Statute of Limitations Ran From the Date of Liquidation

Aegis argues that the statute of limitations runs from the date of liquidation, or 30 days thereafter, rather than the date of the demand because all events necessary to fix the surety's liability occurs at liquidation. Aegis MSJ at 12–13. The government responds that the government's right of action to collect upon a bond accrues when the bond is breached, which occurs only when Customs issues the demand, and the surety fails to pay.[9] Gov. MSJ at 16. Accordingly, the government argues that the statute of limitations runs from the date of the demand. *Id.* at 17–18. Alternatively, the government argues that the statute of limitations runs from the date of the issuance of the bill based on the plain language of the statute as held by the court in *Aegis I*. *See id.* at 23.

Two statutes potentially establish the time limit for the government to recover on a Customs bond. 28 U.S.C. § 2415(a) establishes a six-year statute of limitations on government actions for "money damages . . . founded upon any contract express or implied in law or fact[.]" 19 U.S.C. § 1505(b) defines when the government's cause of action to sue on a Customs bond accrues. The latter states that "[d]uties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment." 19 U.S.C. § 1505(d) goes on to state that "any unpaid balance shall be considered delinquent and bear interest by 30-day

[8] As Aegis argued at Oral Argument, this breach was material for a number of reasons. Customs' delay to timely liquidate the entry ran up Aegis' liability from around $50,000 to around $100,000. Oral Argument at 50:10. The delay in issuing the demand resulted in Aegis owing thousands more than it would have if Customs had promptly issued the demand. *Id.* The delay has also forced Aegis to incur significant costs to litigate multiple cases before the United States Court of International Trade on this issue and to settle other cases to avoid incurring even more litigation costs. *Id.* at 51:33.

[9] The government argues Aegis is liable for interest running from the date the first bill issued to when Aegis became delinquent, along with post-judgment interest running from the date that the court enters judgment. Gov. MSJ at 10–11. Aegis does not respond to this argument. Because the court holds that the government breached the contract and that its action is time-barred, the court need not address this argument.

periods . . . from the date of liquidation or reliquidation . . . .” In *Aegis I*, the court read the two statutes to mean that the statute of limitations runs from the billing date. *See* 693 F. Supp. 3d at 1338. In *Am. Home*, the court held that the statute of limitations runs from the date of liquidation because “that was when the amount of the debt previously established at importation became fixed.” 653 F. Supp. 3d at 1290.

A cause of action accrues when all events necessary to state a claim have occurred. *United States v. Commodities Export Co.*, 972 F.2d 1266, 1270 (Fed. Cir. 1992) (quoting *Chevron U.S.A., Inc. v. United States*, 923 F.2d 830, 834 (Fed. Cir. 1991); *Nager Elec. Co. v. United States*, 368 F.2d 847, 851–52 (1966)). While the importer’s liability for duties on the subject merchandise attaches at the time of importation, the amount of the debt is legally fixed at liquidation. *See* 19 C.F.R. § 141.1(b)(1); 19 C.F.R. § 159.1 (“Liquidation means the final computation or ascertainment of duties on entries for consumption or drawback entries.”). Accordingly, “[t]he [g]overnment’s right to collect additional duties attaches when the entry liquidates.” *Am. Home*, 653 F. Supp. at 1288–89 (quoting *United States v. Great Am. Ins. Co. of N.Y.*, 35 CIT 1130, 1140, 791 F. Supp. 2d. 1337, 1350 (2011), *aff’d* 738 F.3d 1320 (Fed. Cir. 2013)); *see also United States v. Int’l Fid. Ins. Co.*, 273 F. Supp. 3d 1170, 1176 (CIT 2017) (“In a collection action on a customs bond, ‘[t]he Government’s right of action accrues from the date of liquidation.’”) (citation omitted).

While the court in *Aegis I* correctly found that the language of 19 U.S.C. § 1505(b) on its face suggests that the statute of limitations runs from the date of the issuance of the bill, such an interpretation runs contrary to Congressional intent and would lead to untenable results. The prior language of 19 U.S.C. § 1505(b) read “[t]he appropriate customs officer shall collect any increased . . . duties due . . . *as determined on a liquidation or reliquidation*.” 19 U.S.C. § 1505(b) (1982) (emphasis added). Congress amended the statute to state “[d]uties determined to be due upon liquidation or reliquidation shall be due 15 days *after the date of that liquidation or reliquidation* [.]” 19 U.S.C. § 1505(c) (1988) (emphasis added). Congress once again amended the statute to read “[d]uties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment” in a section relating to *collection* of duties. 19 U.S.C. § 1505(b); *see* NAFTA Implementation Act, Pub. L. No. 103–182, § 642, 107 Stat. 2057 (1993). If Congress had intended to shift the triggering event of the statute of limitations from the clear and defined date of liquidation to the muddled date of whenever Customs decides to issue a bill, it would have stated so

more clearly. *See Whitman v. Am. Trucking Assn's*, 531 U.S. 457, 468 (2001) ("Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."). Rather, in amending the statute, apparently Congress attempted to bring clarity to the collection process and encourage prompt payment by providing a grace period.

The remaining text of 19 U.S.C. § 1505 supports this inference. As described previously, 19 U.S.C. § 1505(d) states that "any unpaid balance shall be considered delinquent and bear interest . . . from the date of *liquidation or reliquidation* . . . ." (emphasis added). This indicates that Congress considered the date of liquidation, not the date of issuance of the bill, as the moment at which liability attaches. This is particularly apparent when considered alongside 28 U.S.C. § 2415(a), which aims to level the playing field between the government and private litigants, by ensuring that the government may not indefinitely postpone the running of the statute of limitations. *See Commodities Export Co.*, 972 F.2d at 1271 n.3 (quoting *Crown Coat Front Co. v. United States*, 386 U.S. 503, 521 (1967)). Without clearer indication, the court cannot conclude that Congress intended for 19 U.S.C. § 1505(b) to hand Customs complete authority to indefinitely postpone the statute of limitations, particularly when the six-year statute of limitations set out in 28 U.S.C. § 2415(a) aims to limit the government's litigation advantage, not just prevent stale claims.

Further, as discussed above, all the necessary events for the government to state a claim occur at the time of liquidation, meaning it is the proper point in time for the cause of action to accrue. Customs bonds do not require a demand to be made before a suit can be brought because a surety's obligation to pay arises at liquidation and the government's cause of action for payment accrues when the debt is unpaid. *See Am. Home*, 653 F. Supp. 3d at 1292; *see also United States v. Cocoa Berkau*, 990 F.2d 610, 614 (Fed. Cir. 1993) (noting that the "demand made by Customs upon the surety was merely a procedural step for obtaining the damages and did not in itself create liability"). Here, the subject entry was liquidated by operation of law on March 19, 2009. Gov. SOF ¶ 10; Aegis SOF ¶ 32. Because Aegis was jointly and severally liable for the unpaid duties, the government's cause of action against Aegis accrued at the same moment that it accrued against Presstek: the date of liquidation. Although Customs made two demands on Aegis, these demands were not a necessary event for the government's cause of action. *See Cocoa Berkau*, 990 F.2d at 614. Accordingly, the statute of limitations began to run on March 19, 2009. Gov. SOF ¶ 10; Aegis SOF ¶ 32. The six-year statute

of limitations therefore expired on March 19, 2015. *See* 28 U.S.C. § 2415(a). The government did not file suit until November 22, 2022, meaning its action is barred by the statute of limitations.[10] Aegis' SOF ¶ 42.

CONCLUSION

For the foregoing reasons, the court grants Aegis' motion for summary judgment, ECF No. 30, and denies the government's motion for summary judgment, ECF No. 34. Judgment will be entered accordingly.

Dated: June 11, 2025
New York, New York

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

[10] Aegis also argues that the doctrine of impairment of suretyship bars the government's suit because the government's delay altered the risks that Aegis faced. Aegis MSJ at 29. Aegis also contends that the government impaired Aegis' right to recourse because LGIC, its re-insurer, went insolvent during Customs' delay in issuing the demand. *Id.* at 34. The government responds it took no actions that increased Aegis' risk because Customs acted within the statutory scheme when issuing the demand. Gov. MSJ at 30. As the court discussed above, Customs' actions were unreasonable, and the government's suit is barred by the statute of limitations. The court therefore need not turn to the defense of impairment of suretyship to provide relief for Aegis.

Slip Op. 25–74

DALIAN MEISEN WOODWORKING CO., LTD., Plaintiff, and CABINETS TO GO, LLC, and THE ANCIENTREE CABINET CO., LTD., Plaintiff-Intervenors, v. UNITED STATES, Defendant, and AMERICAN KITCHEN CABINET ALLIANCE, Defendant-Intervenor.

Before: Richard K. Eaton, Judge
Court No. 20–00110

[U.S. Department of Commerce's Third Remand Results are sustained.]

Dated: June 12, 2025

Stephen W. Brophy and *Jeffrey S. Neeley*, Husch Blackwell, LLP, of Washington, D.C., for Plaintiff Dalian Meisen Woodworking Co., Ltd.

Alexandra H. Salzman, deKieffer & Horgan, PLLC, of Washington, D.C., for Plaintiff-Intervenor The Ancientree Cabinet Co., Ltd. With her on the brief were *Gregory S. Menegaz* and *J. Kevin Horgan*.

Mark R. Ludwikowski, Clark Hill, PLC, of Washington, D.C., for Plaintiff-Intervenor Cabinets to Go, LLC.

Ioana C. Meyer, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant the United States. With her on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Tara K. Hogan*, Assistant Director. Of Counsel on the brief was *Fee Pauwels*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.

Luke A. Meisner, Schagrin Associates, of Washington, D.C., for Defendant-Intervenor American Kitchen Cabinet Alliance. With him on the brief was *Christopher T. Cloutier*.

OPINION

Eaton, Judge:

This case involves the U.S. Department of Commerce's ("Commerce" or the "Department") final determination, as amended pursuant to court remand,[1] in the countervailing duty investigation of wooden cabinets and vanities from the People's Republic of China ("China"). *See Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 Fed. Reg. 11,962 (Dep't of Commerce Feb. 28, 2020) ("Final Determination") and accompanying Issues and Decision Mem. (Feb. 21, 2020), PR[2] 846, ECF No. 33–6 ("Final IDM").

[1] The court has remanded this case three times. *See Dalian Meisen Woodworking Co. v. United States*, No. 20–00110, 2022 WL 1598896 (Ct. Int'l Trade May 12, 2022) (not reported in Federal Supplement); *Dalian Meisen Woodworking Co. v. United States*, No. 20–00110, 2023 WL 3222683 (Ct. Int'l Trade Apr. 20, 2023) (not reported in Federal Supplement); *Dalian Meisen Woodworking Co. v. United States*, 48 CIT __, 719 F. Supp. 3d 1322 (2024).

[2] Record citations are to public and confidential documents on the original investigation record ("PR" and "CR"), the first remand record ("PRR1" and "CRR1"), the second remand record ("PRR2" and "CRR2"), and the third remand record ("PRR3" and "CRR3").

Before the court are Commerce's third remand results,[3] pursuant to the order in *Dalian Meisen Woodworking Co. v. United States*, 48 CIT __, 719 F. Supp. 3d 1322 (2024) ("*Dalian III*"), and the parties' comments and responses. *See* Final Results of Redetermination Pursuant to Court Remand (Nov. 12, 2024), PRR3 6, ECF No. 160–1 ("Third Remand Results"); *see also* Pl.-Int. The Ancientree Cabinet Co., Ltd.'s Remand Cmts. ("Ancientree's Cmts."), ECF No. 164; Def.-Int. American Kitchen Cabinet Alliance's Cmts. ("Alliance's Cmts."), ECF No. 163; Def. United States' Resp. ("Def.'s Resp."), ECF No. 168; Def.-Int. American Kitchen Cabinet Alliance's Resp., ECF No. 167; Pl.-Int. The Ancientree Cabinet Co., Ltd.'s Reply Cmts. ("Ancientree's Reply"), ECF No. 169.

For the following reasons, the court finds that Commerce has complied with the remand order in *Dalian III* and that the Third Remand Results are supported by substantial evidence and otherwise in accordance with law. The Third Remand Results are therefore sustained.

BACKGROUND

The factual and procedural history of this case, which can be found in the court's prior opinions, is supplemented here. *See Dalian Meisen Woodworking Co. v. United States*, No. 20–00110, 2022 WL 1598896 (Ct. Int'l Trade May 12, 2022) (not reported in Federal Supplement) ("*Dalian I*"); *Dalian Meisen Woodworking Co. v. United States*, No. 20–00110, 2023 WL 3222683 (Ct. Int'l Trade Apr. 20, 2023) (not reported in Federal Supplement) ("*Dalian II*"); *Dalian III*, 48 CIT __, 719 F. Supp. 3d 1322.

I. Commerce's Final Determination and the *Dalian I* Remand Order

During its countervailing duty investigation, which covered the period of January 1, 2018, through December 31, 2018,[4] Commerce sent questionnaires to the Chinese government seeking information about the Export Buyer's Credit Program (the "Program"). *See* Initial Questionnaire Issued to Government of China at 33–34, 36 (May 31, 2019), PR 443. The Program, which is administered by China's

[3] Commerce completed its remand results under "respectful protest." Final Results of Redetermination Pursuant to Court Remand at 7, PRR3 6, ECF No. 160–1.

[4] A parallel antidumping duty investigation of the subject merchandise covered part of the same period (July 1, 2018, through December 31, 2018) and ran concurrently with the countervailing duty investigation. *See Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 84 Fed. Reg. 12,587 (Dep't of Commerce Apr. 2, 2019); *Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 84 Fed. Reg. 12,581 (Dep't of Commerce Apr. 2, 2019).

Export-Import Bank, is designed to promote the sale of Chinese exports by providing loans at preferential rates to foreign purchasers (including, at least potentially, those in the United States), directly or through third-party banks. The information Commerce asked for included operational information about the Program, e.g., the disbursement of funds through third-party banks, and revisions that China made to the Program in 2013. *See id.*

China provided some, but not all, of the operational information that Commerce sought. For example, while it provided the "Administrative Measures of Export Buyers' Credit of the Export-Import Bank of China . . . and Detailed Implementation Rules Governing Export Buyers' Credit of the Export-Import Bank of China," China failed to provide "a list of all partner/correspondent banks involved in disbursement of funds under the [Program]." Government of China's Initial Questionnaire Resp. at 71–72 (July 15, 2019), PR 505. Instead, China responded that Commerce's question asking for the bank information was "not applicable" because the Program was not used by respondents or their U.S. customers. *See id.*; *see also* Final IDM at 26–27.

With respect to the 2013 Program revisions,[5] China responded that the information was internal to the Export-Import Bank, not public, and not available for release, and further that it could not compel the Export-Import Bank to give the information to Commerce. *See* Final IDM at 26–27. China further responded that it "had confirmed that 'none of the U.S. customers of the mandatory respondents has been provided with loans under this program,'" and, thus, answers to Commerce's questions relating to revisions to the Program were "not required." *Id.* at 26 (quoting Government of China's Initial Questionnaire Resp. at 70).

During the underlying investigation, Commerce verified questionnaire responses in China at the offices of Ancientree (and Plaintiff Dalian Meisen Woodworking Co., Ltd. ("Meisen")) from October 29, 2019, through November 15, 2019, as required by 19 U.S.C. § 1677m(i). *See* Final IDM at 2; *see also* 19 U.S.C. § 1677m(i)(1) ("The administering authority shall verify all information relied upon in making . . . a final determination in an investigation."). Though it was

[5] The revisions with respect to which Commerce asked for information pertained to an amendment that was apparently made to the Administrative Measures in 2013, which eliminated the minimum $2 million contract value requirement to apply for a loan under the Program. *See* Final IDM 24–25.

able to verify the "non-use" of some of the subsidies[6] under investigation, Commerce did not attempt to verify the respondents' claims that they neither used nor received a benefit under the Program. *See, e.g.*, Ancientree Verification Rep. at 9 (Jan. 7, 2020), PR 808; *see also* Final IDM at 31. Instead, Commerce stated that it was "unable to verify in a meaningful manner what little information there is on the record indicating non-use . . . with the exporters, U.S. customers, or at the China [Export-Import] Bank itself, given the refusal of [China] to provide the 2013 revision and a complete list of correspondent/partner/intermediate banks." Final IDM at 34.

Based on this claimed inability to verify non-use, Commerce found that factual gaps in the record existed with respect to the operation of the Program, requiring the use of "facts otherwise available."[7] *See* 19 U.S.C. § 1677e(a); Final IDM at cmt. 3.

Perhaps anticipating, or being actually aware, that China would fail to provide the requested information, Ancientree (one of the mandatory respondents) had placed on the record sworn declarations by its U.S. customers stating that they did not use the Program to make purchases from Ancientree during the period of investigation.[8] *See* Ancientree's Initial Section III Resp. at 27–28 & Ex. II-12 (July 11, 2019), PR 495–496, CR 189–190. By providing customer declarations of non-use, Ancientree sought to demonstrate that the Program had not conferred a "benefit" on the company—a statutory

[6] Besides the Export Buyer's Credit Program, the other alleged subsidies under investigation included, for example, the alleged provision of certain materials, like standing timber, cut timber, and veneers, for less than adequate remuneration. *See* Final IDM at 5–8.

[7] Commerce must use "facts otherwise available" if, during the investigation or administrative review, the Department determines that (1) "necessary information is not available on the record" or (2) "an interested party or any other person . . . withholds information that has been requested by [Commerce]," "fails to provide such information by the deadlines . . . or in the form and manner requested," "significantly impedes a proceeding," or "provides such information but the information cannot be verified." 19 U.S.C. § 1677e(a)(1)-(2).

[8] Each declaration stated that the U.S. customer had "purchased subject wooden cabinets and vanities and components thereof from [Ancientree] during the period between January 1, 2018 and December 31, 2018"; had "not financed any purchases from [Ancientree] through the use of the Import-Export Bank of China's export buyer's credit program," and that the customer "has never used the Import Export Bank of China's financing (*i.e.*, 'Buyer's Credit program') in any way." *See* Ancientree's Initial Section III Resp. at Ex. II-12 (July 11, 2019), PR 495–496, CR 189–190.

precondition to the imposition of countervailing duties.[9] Thus, Ancientree maintained that the operational information that China failed to provide (e.g., list of partner/correspondent banks) was irrelevant. No doubt Ancientree was familiar with case law indicating that a respondent could not be subject to the imposition of adverse facts available based on a gap created by the failure of a third party to answer questionnaires, where the requested information was available elsewhere on the record. *See, e.g.*, *GPX Int'l Tire Corp. v. United States*, 37 CIT 19, 58–59, 893 F. Supp. 2d 1296, 1332 (2013), *aff'd*, 780 F.3d 1136 (Fed. Cir. 2015); *Fine Furniture (Shanghai) Ltd. v. United States*, 36 CIT 1206, 1209, 865 F. Supp. 2d 1254, 1260 (2012), *aff'd*, 748 F.3d 1365 (Fed. Cir. 2014).

Commerce found that the customer declarations did not fill the gaps in the record left by China's failure to provide the requested operational information because, among other reasons, the declarations could not be verified without a "complete understanding" of how Program loans were distributed. *See* Final IDM at 30 ("Given the complicated structure of loan disbursements which can involve various banks for this program, Commerce's complete understanding of how this program is administrated is necessary to verify claims of non-use."); *see also* 19 U.S.C. § 1677m(i)(1) ("The administering authority shall verify all information relied upon in making . . . a final determination in an investigation."). Thus, Commerce found that, notwithstanding the non-use evidence, the declarations could not be

[9] Under the countervailing duty law, Commerce determines whether there is a subsidy, i.e., a financial contribution by an "authority" (such as a government) that confers a benefit to the recipient and is specific. *See* 19 U.S.C. § 1677(5)(B) (subsidy), (D) (financial contribution), (E) (benefit conferred), (5A) (specificity). "A benefit shall normally be treated as conferred where there is a benefit to the recipient, including . . . in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." *Id*. § 1677(5)(E)(ii). Here, the benefit to Ancientree would result from its customers' cost of buying the subject wooden cabinets and vanities being reduced by their receiving preferential rates on loan proceeds used to buy the merchandise.

verified,[10] the gaps in the record were not filled, and the use of facts available was required to fill those gaps.

In addition, Commerce found that China failed to cooperate to the best of its ability with its requests for information about the Program, and so applied adverse inferences when selecting from among the facts otherwise available.[11] *See* Final IDM at 36 (finding "that an adverse inference is warranted in the application of facts available . . . because [China] did not act to the best of its ability in providing the necessary information to Commerce"); *see also* 19 U.S.C. § 1677e(b)(1).

Based on adverse facts available, Commerce then concluded that the Program was countervailable, that Ancientree's U.S. customers used the Program to finance their purchases of the subject wooden cabinets and vanities, and that thus Ancientree had benefitted from the Program. *See* Final IDM at cmt. 3; *see also* Final Determination, 85 Fed. Reg. at 11,963 (listing subsidy rates). As an adverse facts available rate for the Program, Commerce selected 10.54% *ad valorem*, the highest rate determined for, what Commerce found to be, a similar program in the *Coated Paper* proceeding.[12] *See* Final IDM

[10] In the Final IDM, Commerce identified the gap more specifically:

> In short, because the [Chinese government] failed to provide Commerce with information necessary to identify a paper trail of a direct or indirect export credit[] from the China Ex-Im Bank, we would not know what to look for behind each loan in attempting to identify which loan was provided by the China Ex-Im Bank via a correspondent bank under the [Program]. This necessary information is missing from the record because such disbursement information is only known by the originating bank, the China Ex-Im Bank, which is a government-controlled bank. Without cooperation from the China Ex-Im Bank and/or the [Chinese government], we cannot know the banks that could have disbursed export buyer's credits to the company respondents' customers. Therefore, there are gaps in the record because the [Chinese government] refused to provide the requisite disbursement information.

Final IDM at 34.

[11] Where Commerce determines that the use of facts available is required, it may apply adverse inferences to those facts if it makes the requisite additional finding that that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." 19 U.S.C. § 1677e(b)(1).

[12] As will be discussed in greater detail *infra*, during the investigation segment of the parallel antidumping duty proceeding, Commerce reduced Ancientree's cash deposit rate to 0.00% to offset the 10.54% subsidy rate that Commerce assigned to the Program in the countervailing duty investigation, pursuant to 19 U.S.C. § 1677a(c)(1)(C). *See Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 84 Fed. Reg. 54,106, 54,107 (Dep't of Commerce Oct. 9, 2019); *Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 Fed. Reg. 11,953 (Dep't of Commerce Feb. 28, 2020), *as corrected by Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Corrected Notice of Final Affirmative Determination of Sales at Less Than Fair Value*, 85 Fed. Reg. 17,855 (Dep't of Commerce Mar. 31, 2020) (correcting punctuation errors in company names).

37–38 (citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China*, 75 Fed. Reg. 70,201, 70,202 (Dep't of Commerce Nov. 17, 2010) (amended final determination)).

In *Dalian I*, the court remanded Commerce's adverse facts available finding that Ancientree (and Plaintiff Meisen) benefitted from the Program. *See Dalian I*, 2022 WL 1598896, at *8–9. The court found that remand was required because Commerce's use of facts available was not supported by substantial evidence, since the only actual record evidence was the uncontroverted sworn U.S. customer declarations of non-use:

> Here, as in other cases,[13] to justify the substitution of relevant evidence placed on the record by cooperating respondents with facts available, Commerce has constructed an argument that is difficult to credit—*i.e.*, that operational information was withheld by China and therefore there are gaps regarding the use of the program. The problem with this argument is that the withheld information is (at best) only indirectly related to alleged actual use of the program by Meisen's and Ancientree's U.S. customers. Moreover, Commerce's argument that the operational information is necessary to verify the accuracy of the non-use information because without it, verification is unreasonably burdensome using its typical procedure, rings hollow when Commerce fails to even try.

[13] As the court has noted in prior opinions, the Program has been vigorously litigated in cases before this Court. To date, the merits of these cases have yet to be reviewed by the Federal Circuit. *See, e.g.*, *Dalian I*, 2022 WL 1598896, at *9 n.9 ("As noted in prior cases, Commerce has never appealed this Court's rejection of the Department's facts otherwise available determination in the context of the Export Buyer's Credit Program." (citing *Clearon Corp. v. United States*, 44 CIT __, __, 474 F. Supp. 3d 1339, 1353 n.13 (2020)). Commerce's appeal in *Risen Energy Co. v. United States*, was voluntarily dismissed by the parties on July 9, 2024. Mandate Order, *Risen Energy Co. v. United States*, No. 24–1524, (Fed. Cir. July 9, 2024), ECF No. 20. Though the Program has been the subject of at least one decision by this Court since then, as of the date of this opinion, no appeal of this issue has been filed. *See, e.g.*, *Yama Ribbons & Bows Co. v. United States*, 48 CIT __, __, 719 F. Supp. 3d 1388, 1393 (2024) (sustaining Commerce's determination, on remand, that "the [Program] was not used by Yama" and its revision of "Yama's overall subsidy rate to exclude the 10.54 percent [adverse facts available] subsidy rate assigned to the [Program]."). It is worth noting that most of the cases that have come before this Court, with records similar to the record in this case, have directed Commerce to exclude the Program from its subsidy calculations. *See, e.g.*, *id.*; *see also Risen Energy Co. v. United States*, 47 CIT __, __, 665 F. Supp. 3d 1335, 1344 (2023) ("At this stage, every piece of evidence presented to Commerce and to the court supports the conclusion that Risen's sales were not aided by the [Program]. In the face of substantial evidence of non-use from Risen and its customers, and no evidence of use supported by actual evidence or any reasonable [adverse facts available] inference, Commerce must not include a subsidy amount for [the Program]."); *see also id.* at __, 665 F. Supp. 3d at 1344 n.7 ("Commerce has . . . never found any evidence that any U.S. company has used the [Program].").

Id. at *8. It bears repeating that, unlike in reviews,[14] in investigations Commerce is directed by statute to verify "all information relied upon in making . . . a final determination." 19 U.S.C. § 1677m(i)(1) ("The administering authority *shall* verify all information relied upon in making . . . a final determination in an investigation." (emphasis added)); *see also* 19 C.F.R. § 351.307(b)(1)(i). The court thus directed that

> on remand, Commerce shall either (1) find a practical solution to verify the non-use information on the record, such as the reopening of the record to issue supplemental questionnaires to respondents and their U.S. customers; or (2) recalculate the countervailing duty rates for Meisen and Ancientree to exclude the subsidy rate for the Export Buyer's Credit Program, and recalculate the all-others rate accordingly.

Dalian I, 2022 WL 1598896, at *11. A remand proceeding commenced thereafter.

II. Commerce's First Remand Results and the *Dalian II* Remand Order

On remand, Commerce reopened the record and sought to verify non-use of the Program by issuing a supplemental questionnaire. The supplemental questionnaire asked respondents to report "all loans/financing to each of your U.S. importers/customers that were received and/or outstanding during the period of investigation . . . regardless of whether you consider the financing to have been provided under the Export Buyer's Credit program," including non-traditional loans. *See, e.g.*, Remand Redetermination for the Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components

[14] In reviews, verification is required only if it is "timely requested by an interested party," and "no verification was made . . . during the 2 immediately preceding reviews and determinations under section 1675(a) of this title of the same order, finding, or notice," except "if good cause for verification is shown." 19 U.S.C. § 1677m(i)(3); *see also* 19 C.F.R. § 351.307(b)(1)(v). This was not always the case. Prior to the 1984 amendments to the statute, the Department "was required to verify information submitted by a foreign manufacturer during a section 751 administrative review." *Monsanto Co. v. United States*, 12 CIT 949, 951, 698 F. Supp. 285, 288 (1988) (citing *Al Tech Specialty Steel Corp. v. United States*, 6 CIT 245, 575 F. Supp. 1277 (1983), *aff'd*, 745 F.2d 632 (Fed. Cir. 1984)). The change in the law no longer requiring verifications in administrative reviews seems to have been a way to alleviate the administrative burden on Commerce, except in certain circumstances, as provided in the statute and regulations. *See id.* at 951, 698 F. Supp. at 288 ("Section 618 of the Trade and Tariff Act of 1984, codified at 19 U.S.C. § 1677e (Supp. IV 1986), relieves [Commerce] of the *burden of conducting verification* if verification occurred during either of the preceding two administrative reviews, unless good cause for verification is shown." (emphasis added)).

Thereof from the People's Republic of China: Export Buyer's Credit Suppl. Questionnaire, attach. at 1 (May 19, 2022), PRR1 1. Commerce asked that the parties "[s]ubmit the information requested in the ***Loan Template*** as an attachment to your response." *Id.* The loan template asked for: the names of lenders, the date of the loan agreement, the date of the loan receipt, the purpose of the loan, the initial loan amount, the currency of the loan, the life of the loan, the type of interest (i.e., fixed or variable rate), the interest rate specified in the agreement, the date of principal payments, amount of principal payments, dates of interest payment, amounts of interest paid, principal balance to which each interest payment applied, and the total number of days each payment covered, for each loan with interest payments during the period of investigation. *Id.*

In response to the supplemental questionnaire, Commerce received complete information for some, but not all, of Ancientree's U.S. customers. That is, Ancientree reported loan information for fifteen of its twenty-seven unaffiliated U.S. customers, which, according to the company, represented approximately 90% of its U.S. sales both by volume and by value during the period of investigation. *See* Ancientree Export Buyer's Credit Suppl. Questionnaire Resp. at 1 (June 13, 2022), PRR1 14, CRR1 6–15, ECF No. 97. Of the twelve U.S. companies whose loan information Ancientree failed to report, one had gone out of business. *Id.* With respect to the remaining eleven companies, representing approximately 10% of its U.S. sales both by volume and value, Ancientree stated that despite its efforts, it could not reach, or could not convince, those companies to provide the loan information that Commerce requested. *Id.* at 1–2.

In the remand results pursuant to *Dalian I*, Commerce found that without *complete* responses for *all* U.S. customers it would be futile to attempt to verify *any* of the non-use information placed on the remand record. *See* Final Results of Redetermination Pursuant to Court Remand at 21 (Aug. 5, 2022), ECF No. 86–1 ("First Remand Results") ("The fact that the respondents in this remand did not provide complete responses for all their U.S. customers guaranteed that the record would remain incomplete as to usage information, thus, rendering futile any efforts to verify non-usage."). Because, for Commerce, the claims of non-use could not be verified, gaps in the record persisted.

In *Dalian II*, the court sustained Commerce's First Remand Results, in part,[15] and remanded its use of facts available with respect to Ancientree. The court held that substantial evidence did not support Commerce's finding that the use of facts available was required

[15] The court sustained Commerce's finding, based on adverse facts available, that Plaintiff Meisen used and benefitted from the Program. *Dalian II*, 2023 WL 3222683, at *8.

based on Commerce's claim that without complete loan information from all of Ancientree's U.S. customers, the Department could not verify any of the loan information that Ancientree had placed on the remand record. *Dalian II*, 2023 WL 3222683 at *6–7. Accordingly, the court ordered "that, on remand, Commerce attempt to verify Ancientree's submissions to the extent the Department finds appropriate . . . ." *Id.* at *8. A second remand proceeding commenced thereafter.

III. Commerce's Second Remand Results and the *Dalian III* Remand Order

During the second remand proceeding, Commerce made efforts to verify the non-use information that Ancientree placed on the record in response to the supplemental questionnaire. As noted, Ancientree reported loan information for fifteen of its twenty-seven unaffiliated U.S. customers. For ten of the fifteen customers, Commerce was able to conduct in-person verification at the customers' offices. *See* Public Verification Reports of Customers A (PRR2 34), B (PRR2 43), C (PRR2 42), D (PRR2 35), E (PRR2 47), I (PRR2 39), J (PRR2 17), K (PRR2 18), L (PRR2 46), and O (PRR2 45).

Of these ten U.S. customers, Commerce "found no explicit usage of the [P]rogram for . . . eight customers during the [period of investigation]." Final Results of Redetermination Pursuant to Court Remand at 8–9 (Dec. 6, 2023), ECF No. 131 ("Second Remand Results"). Nonetheless, Commerce found that verification, as a whole, was unsuccessful because it was "unable to verify non-use of the [Program] for more than 70 percent of Ancientree's customers." *Id.* at 20. Commerce stated, by way of explanation, its reasons for finding that the verification was unsuccessful:

> At the outset, we note that – of Ancientree's 27 U.S. customers – 12 provided no response to Commerce's [Export Buyer's Credit Program] questionnaire when we reopened the record on remand. Further, while two additional customers (herein referred to as "Customer N" and "Customer M") nominally provided information, these submissions were plainly unresponsive and did not provide any of the requested data relating to the customers' [period of investigation or "POI"] financing. Specifically, Customer N's response summarily stated that: "{t}he pre-acquisition, legacy financial records of Customer N are disorganized" and "{i}t would take company personnel significant time and effort to try to locate and decipher 2018 {POI} financial records . . . if they even exist." With respect to Customer M, Ancientree stated that "we are omitting Customer M's narrative and related exhibit{s} because they are not finalized." Thus,

Customers M and N did not provide complete or verifiable non-use information, and – before the verification process even began – less than half of Ancientree's customers provided a response to Commerce's [Export Buyer's Credit Program] questionnaire.

Three of the remaining 13 customers would not agree to verification. Customers F and G stated that they would not participate in Commerce's verification process prior to any verification arrangements being made. Customer H initially consented to verification but, two days prior to the scheduled start date, stated that it would no longer be participating.

Of the 10 remaining customers, we were unable to verify non-use for two companies (Customer B and Customer E). With respect to Customer B, Commerce officials arrived at the customer's location on September 18, 2023, and began examining the items set forth in the verification agenda that was circulated to Ancientree and the customer in advance. During the on-site verification process, a company official asked the Commerce team to step out of the conference room. At that time, a company official entered the verification room and took several key documents that Commerce officials had collected as exhibits. The company representative stated that Customer B would no longer be providing the information. The verification process was halted at this time.

Customer E did permit Commerce officials to conduct the verification process. However, during the verification procedure, Customer E failed to provide crucial documentation that was requested prior to verification. Specifically, Customer E did not provide the underlying loan agreement(s) and/or application(s) relating to the line of credit that was outstanding during the POI; this represents the type of documentation that would permit Commerce officials to analyze the basis for the loan(s) and any restrictions or requirements relating to the lending. Such information was requested in Commerce's [Export Buyer's Credit Program] Supplemental Questionnaire. Customer E provided "Change in Terms" agreements for the credit facility, which operated to extend the duration of the loan, but it did not

> provide the underlying loan documentation itself. . . .[16] These documents were necessary for Commerce's analysis. Accordingly, in the verification agenda issued prior to the on-site verification process, we identified the loan agreement and application as key documentary support for Customer E's reporting. Nonetheless, these documents were not provided at verification, restricting Commerce's ability to examine the company's usage of the [Program].
>
> After accounting for the difficulties identified above, we were unable to verify non-use of the [Program] for more than 70 percent of Ancientree's customers. Further, *while we found no explicit usage of the program for the remaining eight customers during the POI, these eight customers accounted for far less than Ancientree's claim of "approximately 90 {percent}" of POI sales*.[] Given that a clear majority of the customers that provided certifications of non-use in this proceeding declined, or otherwise were unable, to support such certifications with verifiable information, *we do not find that this level of completeness is sufficient to overcome [China's] non-cooperation, and to permit a finding of non-use here*.

Id. at 6–9 (emphasis added). It is worth noting that Commerce relied on its inability to verify non-usage of the Program for a majority of Ancientree's POI customers rather than its ability to verify non-use with respect to a majority of Ancientree's sales by volume and by value. This may be because, "[a]lthough Commerce verified Ancientree's *overall* sales figures as part of the underlying investigation, it did not – and had no reason to – verify such figures on a *customer-specific* basis." *Id.* at 9 n.43 (emphasis added). Notwithstanding that the record did not contain verified sales data on a customer-specific basis for Ancientree, during oral argument, Commerce acknowledged that the eight U.S. customers whose non-use of the Program was verified represented 79% of Ancientree's sales by value. *See* Oral

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[16] Regarding the significance of the underlying loan documentation, Commerce stated, by way of explanation:

> This is significant, because the "Change in Terms" agreements incorporate by reference the underlying 2012 loan documentation. For instance, they reference the terms set forth in an underlying Promissory Note and Business Loan Agreement, *i.e.*, noting that "This Note is subject to and is governed by the term[s] of a Business Loan Agreement (the Loan Agreement) between Borrower and Lender." Similarly, Customer E's numerous draw requests under the line of credit reference the underlying documents, noting that such requests are made "{u}nder and pursuant to the terms of that certain Business Loan Agreement and Promissory Note dated February 13, 2012."

Second Remand Results at 8.

Argument at 7:20–35 (Apr. 17, 2024). But apparently, for Commerce, successful verification of 79% of sales by value did not amount to a "successful" verification as that word appeared in *Dalian II*'s remand order:

> With respect to calculating a *pro rata* adjustment for Ancientree regarding the [Program], upon remand, the Court ordered that Commerce could elect to attempt verification of Ancientree's submissions and "if that is successful" should accept the *pro rata* adjustment proposed by Ancientree or conclude that the [Program] was not used at all. As detailed above, over 70 percent of Ancientree's customers – which accounted for a significant percentage of Ancientree's U.S. sales during the POI, by volume – declined or otherwise failed to be fully verified. Thus, Commerce concludes that verification of Ancientree's submissions *was not successful within the meaning of the Court's instructions* and it is, therefore, not necessary or appropriate to apply a *pro rata* adjustment as sought by Ancientree or to conclude that Ancientree did not use the [Program].

Second Remand Results at 9–10 (emphasis added). In other words, Commerce interpreted the word "successful" in the court's remand order to mean verification of some number of Ancientree's U.S. customers higher than eight, or some greater percentage of Ancientree's customers than the roughly 30% that Commerce was able to verify, instead of looking to the percentage of sales by value that could be verified (approximately 79%). Having found that the non-use verification was unsuccessful, Commerce then found that it was not "necessary or appropriate" to apply a *pro rata* adjustment or find non-use of the Program, as directed in the court's remand order. *Id.* at 10; *see Dalian II*, 2023 WL 3222683, at *8.

In addition, Commerce concluded that because verification was "unsuccessful," the use of facts available was required because "there is a gap in the record that Ancientree has been unable to fill with verifiable information." Second Remand Results at 21. The gap in the record was identified as that which "result[ed] from the Government of China . . . withholding necessary information that was requested of it." *Id.* at 2.

Commerce further found that applying an adverse inference when selecting from among the facts available was appropriate because of China's "failure to provide necessary information on the [Program]" in response to Commerce's questionnaires. *Id.* at 21. Commerce found that, "despite [its] attempt to gather information following the *First Remand Order* [issued in *Dalian I*], and our subsequent attempt to

verify necessary information following the *Second Remand Order* [issued in *Dalian II*] , the record does not contain non-use information that overcomes the [Chinese government's] reporting failure." *Id.*

In making this finding, the Department stated, by way of explanation, that it rejected Ancientree's argument that "Commerce should apply a *pro rata* program rate for the [Program] *or apply [adverse facts available] only to non-responsive customer imports (by setting up customer-specific rates), because each customer's use of the [Program] stands alone*." *Id.* (emphasis added).

In other words, Ancientree had argued that, because verification was successful with respect to some of its U.S. customers, there were two potential methods by which Commerce could adjust its rate: (1) "a *pro rata* adjustment based on the [period of investigation] sales of the customer"; or (2) "*[i]f Commerce declines to* pro rate *the [adverse facts available] rate, Commerce could set up customer-specific rates for the case, with no [Program] subsidy rate included in the rate assigned to the customers that were successfully verified for non-use*." *Id.* at 13–14 (emphasis added).

For the Department, neither method was feasible because (1) "Commerce was unable to verify the sales figures that form the basis of the pro rating sought by Ancientree," and (2) not all of "the customer-specific quantity and value figures that Ancientree provided in support of its proposed *pro rata* adjustment" matched the customer's own reporting.[17] *Id.* at 9 n.43, 21 n.69.

Commerce thus continued to include a 10.54% subsidy rate for the Program, as adverse facts available, in the calculation of Ancientree's total subsidy rate of 13.33%.[18] *See* Final Determination, 85 Fed. Reg. at 11,963.

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[17] By way of explanation, Commerce stated:

> We note that the customer-specific quantity and value figures that Ancientree provided in support of its proposed *pro rata* adjustment remain largely unverified. Although Commerce verified Ancientree's overall sales figures as part of the underlying investigation, it did not – and had no reason to – verify such figures on a customer-specific basis. During our verification of Ancientree's customers, we examined the quantity/value of acquisitions from Ancientree. In some cases, the customer's reporting approximated the Ancientree figures; in others, the figures were not close to those reported by Ancientree.

Second Remand Results at 9 n.43.

[18] The 13.33% rate included the 10.54% Program rate plus rates assigned to other subsidies that were found to have conferred a benefit on Ancientree during the period of investigation: Policy Loans to the Wooden Cabinets Industry (0.10%); Provision of Plywood for less-than-adequate remuneration or "LTAR" (0.01%); Provision of Sawn Wood and Continuously Shaped Wood for LTAR (0.01%); Provision of Particleboard for LTAR (1.15%); Provision of Fiberboard for LTAR (1.20%); Provision of Electricity for LTAR (0.26%); and "other subsidies" such as self-reported grants (0.06%). Final IDM at 5–7. These subsidies, which amounted to 2.79%, were added to the 10.54% Program rate to come up with Ancientree's total subsidy rate of 13.33%.

In *Dalian III*, the court sustained the Second Remand Results, in part,[19] and remanded Commerce's use of adverse facts available with respect to Ancientree's sales to customers whose claims of non-use of the Program to finance their purchases of subject merchandise had not been verified:

> The statute requires Commerce to fill gaps in the administrative record with "facts otherwise available." 19 U.S.C. § 1677e(a). It further permits the application of an adverse inference "in selecting from among the facts otherwise available." *Id.* § 1677e(b)(1). Here, Commerce has found a gap in the record where there is not one in fact. With respect to a majority of sales by value, there is no non-use gap. Rather there is verified information of non-use upon which Commerce must rely. With respect to the verified information, in a related context, this Court has said "Commerce opened the door by requesting additional information already requested on subsidies and cannot shut that door simply because it does not like the relevant information submitted." *GPX Int'l Tire Corp.*, 37 CIT at 60, 893 F. Supp. 2d at 1333.
>
> Because Commerce verified non-use of the Program by certain of Ancientree's U.S. customers but could not (or did not) with respect to others, the court will treat the use of countervailing duties differently for the sales to customers whose non-use of the Program was verified, from those sales where non-use was not verified. As a result of its verification efforts, Commerce now knows for sure that certain of Ancientree's U.S. customers did not use the Program. Based on this verification determination,

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[19] The court found that the statute directed the use of facts available with respect to sales to Ancientree's customers whose non-use was not verified because the unverified claims of non-use created a factual gap in the record:

> [I]n an investigation, Commerce must verify the information on which it relies in making its final determination. [19 U.S.C. § 1677m(i)(1).] With respect to [the sales to U.S. customers whose non-use could not be verified] . . . , a gap has been created because, although there is information of non-use on the record (the declarations), the information could not be verified, and Commerce may not rely on it when making its determination. A gap in the record exists with respect to these sales. Therefore, the use of facts available is directed by statute. *See, e.g.*, *id.* § 1677e(a)(2)(D) (directing that Commerce shall use "facts otherwise available" where, inter alia, a respondent "provides . . . information but the information cannot be verified").

Dalian III, 48 CIT at __, 719 F. Supp. 3d at 1337. The court went on to find that the application of an adverse inference was justified with respect to the same sales "based on China's failure to cooperate." *Id.* The court thus found: "(1) that a gap in the record exists with respect to Ancientree's U.S. customers whose claims of non-use of the Program to finance their purchases of subject merchandise were not verified; and (2) that the application of adverse facts available is authorized with respect to the facts of non-use based on China's failure to fully answer Commerce's questionnaires with respect to the Program." *Id.*

> with respect to the sales to those companies whose non-use of the Program has been verified, Commerce must eliminate the subsidy represented in the rate applied to those sales. Commerce now knows that their declarations of non-use were valid. There is no gap in the record. And *Commerce can base its determination of non-use on verified information in accordance with the statute* [i.e., 19 U.S.C. § 1677m(i)(1), which requires that Commerce "shall verify all information relied upon in making . . . a final determination in an investigation"].
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> This kind of distinction, i.e., separation of sales with respect to which verification was successful from those where it was not successful, is not entirely foreign to Commerce. Where Commerce has been able to verify non-use of the Program by a Chinese respondent's U.S. customers in past cases it has removed the Program subsidy rate from the respondent's total rate. *See, e.g.*, *Risen II*, 2023 WL 2890019, at *3 ("Commerce verified that [the U.S. importer of JA Solar, a Chinese exporter] received no loans or financing connected with the [Chinese government]," and thus "removed the previously applied [Export Buyer's Credit Program] subsidy rate from [the exporter's] total rate."); *Both-Well (Taizhou) Steel Fittings, Co. v. United States*, 46 CIT __, __, 589 F. Supp. 3d 1343, 1345 (2022) (sustaining Commerce's revision of the subsidy rate calculations for respondent where "Commerce determined there is no evidence that the [respondent's] customers applied for or used, directly or indirectly, the [Program] during the period of review; therefore, the use of facts available with an adverse inference was not warranted"). Thus, as to sales to customers whose non-use of the Program was verified, no gap in the record was created by China's refusal to provide requested information because other information was available on the record (indeed legally required verified information) confirming non-use. Since no gap was created, with respect to these sales, the use of facts available (let alone an adverse inference) was not directed by statute. Indeed, the requirement of the use of verified information for an investigation determination directs the opposite result. *See* 19 U.S.C. § 1677m(i)(1).

Dalian III, 48 CIT at __, 719 F. Supp. 3d at 1336–37 (emphasis added). Accordingly, the court ordered:

> [O]n remand, for each customer whose non-use of the Program was verified Commerce must determine a customer-specific rate that excludes a subsidy amount for the Program, and recalculate

> Ancientree's total rate, and the all-others rate. The Department may determine its own method for complying with this order.

Id. at __, 719 F.Supp.3d at 1337–38. A third remand proceeding commenced thereafter.

IV. Commerce's Third Remand Results

In the Third Remand Results, Commerce (1) determined customer-specific subsidy rates to serve as the basis for liquidation; (2) recalculated the total subsidy rate for Ancientree; (3) recalculated the all-others rate; and (4) adjusted the customer-specific rate determined for customers whose non-use of the Program was verified to account for the export subsidy offset that had been granted in the parallel antidumping duty proceeding.

Commerce stated that it intended to instruct U.S. Customs and Border Protection ("Customs") to "revise the amount of [countervailing duty] cash deposits already collected" on entries of Ancientree's merchandise that are subject to this litigation,[20] using the rates recalculated on remand.[21] Third Remand Results at 12.

A. Determination of Customer-Specific Subsidy Rates

First, on remand, Commerce determined a subsidy rate of 2.79% that would apply to imports of subject merchandise sold to Ancientree's customers whose non-use of the Program had been verified. Commerce arrived at this 2.79% rate by subtracting the 10.54% Program rate from Ancientree's total subsidy rate of 13.33%.[22] *See* Third Remand Results at 10 (Table 2).

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[20] Liquidation of the entries subject to this litigation has been enjoined. *See* Order For Statutory Injunction Upon Consent (Oct. 11, 2023), ECF No. 127.

[21] Commerce determined that the customer-specific rates calculated pursuant to *Dalian III* would apply only *retroactively* to revise the cash deposits already collected on imports subject to this litigation. Commerce clarified that it would not "rely on the [customer-specific rates] to establish *prospective* customers-specific cash deposit rates," because, among other reasons, the countervailing duty statute directs the determination of an "estimated individual countervailable subsidy rate for each exporter and producer individually investigated." Third Remand Results at 10, 11 n.48 (quoting 19 U.S.C. § 1671d(c)(1)(B)(i)(I)).

[22] To repeat, 13.33% is the total subsidy rate determined for Ancientree in the Final Determination. *See* 85 Fed. Reg. at 11,963. It is the sum of the rates determined for all countervailable subsidies that were found to have conferred a benefit on the company during the period of investigation: Policy Loans to the Wooden Cabinets Industry (0.10%); Provision of Plywood for LTAR (0.01%); Provision of Sawn Wood and Continuously Shaped Wood for LTAR (0.01%); Provision of Particleboard for LTAR (1.15%); Provision of Fiberboard for LTAR (1.20%); Provision of Electricity for LTAR (0.26%); the Program, i.e., the Export Buyer's Credit Program (10.54%); and self-reported grants (0.06%). Final IDM at 5–7.

For imports of subject merchandise sold to all other Ancientree customers (i.e., those whose non-use was not verified), Commerce found that the 13.33% rate would apply. *Id.*

B. Recalculation of Ancientree's Total Subsidy Rate

Next, on remand, Commerce recalculated Ancientree's total subsidy rate, reducing it from 13.33% to 5.06%. Commerce did this in two steps.

As step one, Commerce revised the Program rate for Ancientree from 10.54% to 2.27%. To arrive at this rate, Commerce pro-rated the 10.54% Program rate by applying an "adjustment factor" of 21.56%—i.e., the percentage of Ancientree's sales, by value, that were made during the period of investigation to its customers who failed to demonstrate non-use of the Program. *Id.* at 8–9. Commerce derived the 21.56% adjustment factor from information placed on the record by Ancientree in the second remand proceeding:

> [The 21.56%] figure is derived from Exhibit 1 of Ancientree's June 13, 2022 [supplemental questionnaire response]. Specifically, we determined that the . . . Customers . . . identified as Customers A, C, D, I, J, K, L, and O in the prior remand, cooperated and successfully demonstrated non-use. Using Exhibit 1, we summed the value of [period of investigation] sales for the *other* Ancientree customers, and then we divided the resulting value by Ancientree's total [period of investigation] sales to the United States. The resulting figure represents the adjustment factor [i.e., 21.56%].

Third Remand Results at 9 n.45. Commerce "multiplied [the 21.56% adjustment factor] by the total [Program] rate (of 10.54 percent) to arrive at the pro-rated Ancientree rate for the [Program], i.e., [2.27%]." *Id.*

Then, using Ancientree's revised Program rate of 2.27%, Commerce recalculated the company's total subsidy rate.[23] That is, Commerce added 2.27% to the rates of the other subsidy programs that were found to have conferred a benefit on Ancientree during the period of investigation.[24] *Id.* at 8. The sum of the rates equaled a total subsidy

[23] In the Final Determination, Commerce determined a total subsidy rate for Ancientree of 13.33%.

[24] That is, Commerce found that Ancientree benefitted from the Program (at the revised rate of 2.27%); Policy Loans to the Wooden Cabinets Industry (0.10%); Provision of Plywood for LTAR (0.01%); Provision of Sawn Wood and Continuously Shaped Wood for LTAR (0.01%); Provision of Particleboard for LTAR (1.15%); Provision of Fiberboard for LTAR (1.20%); Provision of Electricity for LTAR (0.26%); and self-reported grants (0.06%). The sum of these percentages is 5.06%. Third Remand Results at 8 (Table 1).

rate of 5.06% for Ancientree. *See id.* (Table 1).

C. Recalculation of the All-Others Rate

Commerce then recalculated the all-others rate using a simple average of the total subsidy rates determined for the mandatory respondents, including Ancientree's revised total subsidy rate of 5.06%:

> In light of Ancientree's revised rate of 5.06 percent calculated in this remand redetermination, we have recalculated the all-others rate through a simple average of the rates for Ancientree, Meisen, and Rizhao Foremost Woodwork Manufacturing Company Ltd (the third mandatory respondent in the [countervailing duty] investigation), *i.e.*, (5.06 + 18.27 + 31.18) / 3 = 18.17 percent.

Third Remand Results at 15. Thus, the all-others rate was reduced from 20.93% (determined in the Final Determination) to 18.17% (determined in the Third Remand Results).

D. Commerce's Adjustment of 2.79% Customer-Specific Rate to Account for Export Subsidy Offset in Parallel Antidumping Duty Proceeding

Then, Commerce adjusted the subsidy rate determined for customers whose non-use of the Program was verified (2.79%) *upward* to account for the export subsidy offset that had been granted in the parallel antidumping duty proceeding, as discussed below.

1. Background on the "Export Subsidy" Offset Granted for the Program in the Antidumping Duty Proceeding

Countervailable subsidies take different forms.[25] "Export subsidies" are one kind of countervailable subsidy. 19 U.S.C. § 1677(5)(A), (5A)(B). "An export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions." *Id.* § 1677(5A)(B). A subsidy is considered "contingent upon export performance" if the provision of the subsidy is tied to actual or anticipated exportation or export earnings. 19 C.F.R. § 351.514(a). Commerce considers China's Export Buyer's Credit Program an "export subsidy," and it would be difficult to argue otherwise. *See* Third Remand Results at 12 & n.53.

[25] Not all subsidies are countervailable, but some, including export subsidies, are. *See* 19 U.S.C. § 1677(5)(A), (5A)(B) (export subsidy), (5B)(A) (categories of non-countervailable subsidies). *See supra* note 9 for the statutory elements of a countervailable subsidy.

When Commerce countervails an export subsidy, such as the Program, the rate determined for the subsidy is applied in two ways. First, Commerce uses the rate to determine an individual subsidy rate for each mandatory respondent that is found to have benefitted from the subsidy during the period of investigation (or period of review, in an administrative review). That is, Commerce adds together the export subsidy rate (e.g., 10.54% for the Program) plus rates for any other subsidies that are found to have conferred a benefit on the respondent (e.g., provision of inputs for less-than-adequate-remuneration and other subsidies amounting to 2.79%). Their sum equals the respondent's individual subsidy rate (here, 13.33%). The individual subsidy rate is then used to set a cash deposit rate.

Second, where merchandise is subject to parallel countervailing and antidumping duty investigations, as is the case here, Commerce must "offset" the export subsidy in its less-than-fair-value determination, as provided in § 1677a(c)(1)(C) of the antidumping statute. That is, when Commerce makes its dumping determination, by comparing normal value (the price of the merchandise in the home market) and export price or constructed export price (the price of the merchandise sold in the United States), "[t]he price used to establish export price and constructed export price shall be . . . increased by . . . the amount of any countervailing duty imposed on the subject merchandise . . . to offset an export subsidy." 19 U.S.C. § 1677a(c)(1)(C); *see Risen Energy Co. v. United States*, 43 CIT __, __, 477 F. Supp. 3d 1332, 1347 (2020) ("When calculating the dumping margin, Commerce is statutorily required to increase the U.S. Price by the amount of any [countervailing duty] imposed on the subject merchandise to offset an export subsidy."). The purpose of the export subsidy offset is to "avoid the double application of duties." *Jinko Solar Co. v. United States*, 961 F.3d 1177, 1182 (Fed. Cir. 2020) (acknowledging Commerce's explanation that "the theory 'underlying [§ 1677a(c)(1)(C)] is that in parallel [antidumping duty] and [countervailing duty] investigations, if [Commerce] finds that a respondent received the benefits of an export subsidy program, [the statute] presume[s that] the subsidy contributed to lower-priced sales of subject merchandise in the United States.'").

Where Commerce offsets an export subsidy in an antidumping duty proceeding pursuant to 19 U.S.C § 1677a(c)(1)(C), the net effect is to reduce the antidumping cash deposit rate by the amount of the subsidy determined in the companion countervailing duty proceeding. *See, e.g.*, *Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Final Affirmative Determination*

of Sales at Less Than Fair Value, 85 Fed. Reg. 11,953, 11,961 (Dep't of Commerce Feb. 28, 2020) ("Final Dumping Determination") ("We normally adjust [antidumping duty] cash deposit rates by the amount of export subsidies, where appropriate.").

The export subsidy rate does not disappear, however. Here, in the countervailing duty investigation, Commerce determined the 10.54% rate for the Program in its affirmative preliminary determination, published on August 12, 2019. *See Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 Fed. Reg. 39,798 (Dep't of Commerce Aug. 12, 2019) ("Preliminary Countervailing Duty Determination") and accompanying Preliminary Decision Mem. at 23 (Aug. 5, 2019), ECF No. 51 (including 10.54% Program rate in Ancientree's preliminary subsidy rate as adverse facts available). As a result, Commerce directed Customs to collect countervailing cash deposits on entries of Ancientree's subject merchandise made on or after August 12, 2019, at a rate *that included* the 10.54% rate for the Program. Preliminary Countervailing Duty Determination, 84 Fed. Reg. at 39,800.

On October 9, 2019, Commerce published its preliminary affirmative dumping determination. *See Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 84 Fed. Reg. 54,106 (Dep't of Commerce Oct. 9, 2019) ("Preliminary Dumping Determination"). In that determination, Commerce offset the Program in accordance with 19 U.S.C. § 1677a(c)(1)(C). Commerce first determined a preliminary estimated weighted-average dumping margin for Ancientree of 4.49%. *Id.* at 54,107. Commerce then adjusted the 4.49% margin by subtracting the 10.54% Program rate found in the Preliminary Countervailing Duty Determination to arrive at an antidumping duty cash deposit rate of 0.00%. *Id.*; *see also* Third Remand Results at 12 ("Commerce reduced Ancientree's dumping margin to reflect Commerce's affirmative determination of export subsidies for the company, *i.e.*, the affirmative countervailing of the [Program]."). Thus, imports of Ancientree's merchandise were not subject to antidumping duty cash deposits, starting on October 9, 2019, on account of the export subsidy offset for the Program. They were, though, subject to countervailing duty cash deposits starting on August 12, 2019.

On February 28, 2020, Commerce published the Final Determination in the countervailing duty investigation. Commerce determined a 13.33% total subsidy rate for Ancientree, which included the 10.54% rate for the Program plus other subsidy rates equaling 2.79%. *See* Final Determination, 85 Fed. Reg. at 11,963; *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Countervailing Duty Order*, 85 Fed. Reg. 22,134 (Dep't of Commerce Apr. 21, 2020). The Department directed Customs to collect a countervailing duty cash deposit of 13.33% in accordance with the Final Determination. *See* 85 Fed. Reg. at 22,135.

Also on February 28, 2020, Commerce published its final determination in the antidumping duty investigation. Final Dumping Determination, 85 Fed. Reg. at 11,955. Commerce determined a final estimated weighted-average dumping margin for Ancientree of 4.37%. *Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Antidumping Duty Order*, 85 Fed. Reg. 22,126, 22,127 (Dep't of Commerce Apr. 21, 2020). Continuing to apply the export subsidy offset determined in the Preliminary Dumping Determination, Commerce adjusted the 4.37% margin by subtracting the 10.54% Program rate to arrive at a cash deposit rate of 0.00%. Final Dumping Determination, 85 Fed. Reg. at 11,961.

The first and second administrative reviews of the countervailing duty order and the first and second administrative reviews of the antidumping duty order followed in due course.

On the countervailing duty side, Ancientree did not participate in the first or second administrative reviews. *See* Third Remand Results at 11. Thus, the company's individual subsidy rate of 13.33% (which included the 10.54% rate for the Program), determined in the countervailing duty investigation, continued to apply to Ancientree during the periods covered by the two reviews. *See Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2019–2020*, 87 Fed. Reg. 51,967, 51,968 (Dep't of Commerce Aug. 24, 2022) (covering the period of review from August 12, 2019, to December 31, 2020); *Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Final Results and Partial Recission of Countervailing Duty Administrative Review; 2021*, 88 Fed. Reg. 76,732 (Dep't of Commerce Nov. 7, 2023) (covering the period of review from January 1, 2021, to December 31, 2021).

On the antidumping side, Ancientree did not participate in the first administrative review. *See Wooden Cabinet and Vanities and Components Thereof From the People's Republic of China: Preliminary Re-*

sults and Partial Rescission of the Antidumping Duty Administrative Review; 2019–2021, 87 Fed. Reg. 27,090, 27,093 (Dep't of Commerce May 6, 2022) (rescinding review as to Ancientree). Thus, the offset continued at the rate of 10.54%, as did the antidumping duty rate of 4.37%, which, when offset, resulted in a 0.00% antidumping cash deposit rate. The 0.00% antidumping cash deposit rate continued to apply to Ancientree during the period covered by the first administrative review, i.e., October 9, 2019, through March 31, 2021. *Id.*; *see also Wooden Cabinet and Vanities and Components Thereof From the People's Republic of China: Final Results and Partial Rescission of the Antidumping Duty Administrative Review; 2019–2021*, 87 Fed. Reg. 67,674, 67,675 (Dep't of Commerce Nov. 9, 2022).

Ancientree participated in the second administrative review of the antidumping duty order. *See Wooden Cabinet and Vanities and Components Thereof From the People's Republic of China: Final Results and Final Determination of No Shipments of the Antidumping Duty Administrative Review; 2021–2022*, 88 Fed. Reg. 76,729, 76,730 (Dep't of Commerce Nov. 7, 2023) ("Second Antidumping Administrative Review Final Results") (covering the period of review from April 1, 2021, to March 31, 2022). In that review, Commerce did not offset the Program pursuant to 19 U.S.C. § 1677a(c)(1)(C). *Id.* That is, Commerce did not increase U.S. price to account for the Program, and Ancientree did not ask for the offset. Commerce determined a final weighted-average dumping margin for Ancientree of 8.26%, which also served as the company's antidumping duty cash deposit rate. *Id.*

Commerce's failure to provide an offset in the Second Antidumping Administrative Review Final Results was appealed to this Court, in *The Ancientree Cabinet Co. v. United States*, Court No. 23–00262. Ultimately, the *Ancientree* Court held that Ancientree had failed to exhaust the export subsidy offset issue, by failing to raise it timely before Commerce, and found that no exception to the exhaustion requirement applied. The Court, therefore, sustained the final results. *See The Ancientree Cabinet Co. v. United States*, 48 CIT __, __, 736 F. Supp. 3d 1334, 1342 (2024) (judgment entered on Oct. 24, 2024, no appeal filed).

2. Adjustment of 2.79% Customer-Specific Rate Determined in Third Remand Results to Account for Export Subsidy Offset

Against this background, Commerce found, in the Third Remand Results now before the court, that it must account for the offset that was made in the segments of the antidumping duty proceeding in which Ancientree's antidumping cash deposit rate was reduced to

0.00%. That is, where Commerce had removed the 10.54% Program rate from the subsidy rate applicable to customers whose non-use of the Program was verified, it *added* the amount of the offset that was granted in the antidumping duty investigation to ensure the customers did not get both a reduction in their antidumping cash deposit rate because of the Program *and* a lower subsidy rate because of the removal of the Program rate from their subsidy rate:

> Importantly, we note that there exists an antidumping duty . . . order on cabinets from China, and Commerce also investigated Ancientree as a mandatory respondent in that parallel proceeding. When establishing Ancientree's cash deposit rate in the less-than-fair-value investigation, Commerce offset the company's preliminary and final dumping margins for export-contingent subsidies, pursuant to [19 U.S.C. § 1677a(c)(1)(C)]. Therefore, Commerce reduced Ancientree's dumping margin to reflect Commerce's affirmative determination of export subsidies for the company, *i.e.*, the affirmative countervailing of the [Program].
>
> Accordingly, to the extent that Ancientree's rate is recalculated in this [third] remand redetermination as a result of the Court's instructions, *we must account for the fact that a portion of the export subsidy offset has already been realized by Ancientree's customers / importers in the companion [antidumping duty] proceeding*.

Third Remand Results at 12 (emphasis added). In other words, to account for the offset that *decreased* Ancientree's antidumping duty rate to 0.00%, in the reviews that were completed after that investigation, Commerce *increased* the customer-specific subsidy rate for each customer whose non-use of the Program was verified by an amount equal to that offset. *See id.* at 10 (Table 2).

It is worth noting that Commerce did not adjust the customer-specific subsidy rate for the customers whose non-use of the Program was *not* verified because for those customers there was no need to account for (or "undo") the offset. The 10.54% Program rate was properly applied to them. Thus, customers whose non-use of the Program was not verified received a total subsidy rate of 13.33%, which included the 10.54% Program rate.

Thus, for the entries that were made between August 12, 2019 (the date of publication of the Preliminary Countervailing Duty Determination), and October 8, 2019 (the day before publication of the Preliminary Dumping Determination), Commerce found that because "there were no [antidumping duty] measures in effect, . . . the revised

customer-specific subsidy rate can be applied for each customer, i.e., 13.33 percent (for customers found to have used the [Program]) or 2.79 percent[26] (for customers that demonstrated non-use of [Program])." Third Remand Results at 13. That is, because no preliminary dumping determination had been made during this period, no offset had been made. Thus, no offset needed to be taken into account, and the 13.33% and 2.79% revised rates could be applied to customers that were found, respectively, to have used the Program, or not used the Program.

For entries made between October 9, 2019 (the date of publication of the Preliminary Dumping Determination), and December 9, 2019 (the last day of the four-month period during which countervailing duty "provisional measures"[27] were in effect), an offset for the Program was applied during the antidumping duty investigation:

> Commerce had already applied a subsidy offset to Ancientree in the [antidumping duty] proceeding, which resulted in the company's [antidumping duty] cash deposit rate being reduced from 4.49 percent to 0.00 percent. Thus, Ancientree and its customers/importers received an offset of 4.49 percent to their [antidumping duty] cash deposits due to the (prior) countervailing of the [Program]. To account for this, and to ensure that the duties assessed for the customers in question are accurate, we have added the 4.49 percent offset value to the 2.79 percent (*i.e.*, the revised Ancientree rate, excluding [Program]) to arrive at an applicable rate of 7.28 percent [i.e., 4.49% plus 2.79%].

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[26] The 2.79% rate is equal to the sum of the rates determined for non-export subsidies that were found to have conferred a benefit on the company during the period of investigation (i.e., *excluding* the Program): Policy Loans to the Wooden Cabinets Industry (0.10%); Provision of Plywood for LTAR (0.01%); Provision of Sawn Wood and Continuously Shaped Wood for LTAR (0.01%); Provision of Particleboard for LTAR (1.15%); Provision of Fiberboard for LTAR (1.20%); Provision of Electricity for LTAR (0.26%); and self-reported grants (0.06%). These subsidies amounting to 2.79% are also included in the 13.33% rate. While part of the 13.33% rate used to calculate the cash deposit rate resulting from countervailable subsidies, these subsidies are not used to offset the antidumping duty rate. *See* 19 U.S.C. § 1677a(c)(1)(C) ("The price used to establish export price and constructed export price shall be . . . increased by . . . the amount of any countervailing duty imposed on the subject merchandise . . . to offset *an export subsidy*." (emphasis added)).

[27] "Provisional measures" are a way of referring to the remedy that Commerce can provide in a preliminary determination, such as the posting of cash deposits. *See* 19 C.F.R. § 351.205(a) (providing that a preliminary determination is "the first point at which [Commerce] may provide a remedy (sometimes referred to as 'provisional measures') if [Commerce] preliminarily finds that dumping or countervailable subsidization has occurred"); *id.* § 351.205(d) (providing for the posting of cash deposits if Commerce makes an affirmative preliminary determination of dumping or countervailable subsidies). Provisional measures may remain in effect for no more than four months. *See* 19 U.S.C. § 1671b(d). Provisional measures (countervailing duty cash deposits) were in effect in this case.

Id.; *see also* Preliminary Dumping Determination, 84 Fed. Reg. at 54,107 (antidumping cash deposit rate adjusted for export subsidy offset from 4.49% to 0.00%). Thus, for the period October 9, 2019, to December 9, 2019, Ancientree's customers whose non-use of the Program had been verified, and whose antidumping duty cash deposit rate had been reduced to 0.00%, had their subsidy rate increased by an amount equal to the offset so that they received a 7.28% subsidy rate.

For entries made between December 10, 2019, and April 16, 2020, Commerce found that a "gap period" was in effect. That is, "[p]rovisional measures based on the preliminary determination in the [countervailing duty] proceeding had expired, and the [countervailing duty] order had not yet published. Thus, cash deposits were not required during this period, and the applicable [countervailing duty] rate during the period was 0.00 percent." Third Remand Results at 13. That being the case, there was no offset with respect to the antidumping duty rate, and the subsidy rate to be applied to customers whose non-use of the Program was verified would be 2.79%, representing the subsidies other than the Program.

For entries made between April 17, 2020 (the day after countervailing duty provisional measures ended), and December 31, 2020 (the last day of the period of review in the first administrative review of the countervailing duty order), Commerce found:

> Ancientree and its customers/importers received an offset of 4.37 percent in the [antidumping duty] proceeding due to the [Program]. Again, to account for this, and to ensure that the duty liabilities assessed for the customers in question are accurate, we have added the 4.37 percent offset value to the 2.79 percent revised subsidy rate to arrive at an applicable subsidy rate of 7.16 percent.

Id. at 14; *see also* Final Dumping Determination, 85 Fed. Reg. at 11,955 (cash deposit rate adjusted for export subsidy offset from 4.37% to 0.00%). That is, Ancientree and its customers whose non-use of the Program was verified had received the 4.37% offset in the antidumping duty investigation, i.e., the result of the 10.54% Program rate being applied to them. So, here in the Third Remand Results, when Commerce removed the 10.54% Program rate from those customers' revised subsidy rate, it added the 4.37% offset to ensure the customers did not get both a reduction in their antidumping cash deposit rate because of the Program *and* a lower subsidy rate because of the removal of the Program rate from their subsidy rate. Thus, for the period April 17, 2020, to December 31, 2020, customers

whose non-use of the Program had been verified received a 7.16% subsidy rate (i.e., 2.79% + 4.37% = 7.16%).

For entries made between January 1, 2021 (the first day of the period of review in the second administrative review of the countervailing duty order), and March 31, 2021 (the last day of the period of review in the second administrative review of the antidumping duty order), Commerce found:

> Ancientree and its customers/importers received an offset of 4.37 percent to the cash deposit rate in the [antidumping duty] proceeding. To ensure that the duties assessed for the customers in question are accurate, we added the 4.37 percent offset value to the 2.79 percent revised subsidy rate to arrive at [the] applicable subsidy rate of 7.16 percent.

Third Remand Results at 14; *see also* Final Dumping Determination, 85 Fed. Reg. at 11,955. Thus, as with the period April 17, 2020, to December 31, 2020, discussed above, for the period January 1, 2021, to March 31, 2021, customers whose non-use of the Program had been verified received a 7.16% subsidy rate.

Finally, for entries made between April 1, 2021 (the first day of the period of review in the second administrative review of the antidumping duty order), and December 31, 2021 (the last day of the period of review in the second administrative review of the countervailing duty order), Commerce found:

> Commerce did not apply an export subsidy offset in the parallel [antidumping duty] proceeding for Ancientree. Accordingly, the applicable customer specific rates are the [countervailing duty] investigation rates presented herein, with the [Program] rate included (13.33 percent) or without the [Program] rate included (2.79 percent), depending on whether the customer demonstrated non-use.

Third Remand Results at 14. That is, for the April 1, 2021, to December 31, 2021, period, no adjustment was made to the customer-specific rates of 13.33% (applicable to customers whose non-use of the Program had not been verified) or 2.79% (applicable to customers whose non-use was verified). Even though Ancientree participated in the second administrative review of the antidumping duty order, Commerce did not increase U.S. price to account for the Program in that review because the company failed to exhaust its administrative remedies. *See The Ancientree Cabinet Co.*, 48 CIT at __, 736 F. Supp. 3d at 1342.

In sum, on remand, Commerce (1) determined customer-specific rates to serve as the basis for liquidation; (2) recalculated the total subsidy rate for Ancientree; (3) recalculated the all-others rate; and (4) adjusted the customer-specific rate determined for customers whose non-use of the Program was verified to account for the export subsidy offset that had been granted in the parallel antidumping duty proceeding. Commerce stated that it would instruct Customs to apply the rates determined on remand *retroactively* to revise the cash deposits previously made on entries made between August 12, 2019, and December 31, 2021, whose liquidation has been enjoined during this litigation.[28] Third Remand Results at 10–12 (citing 19 U.S.C. § 1671d(c)(1)(B)(i)(I)).

DISCUSSION

The court will sustain the Third Remand Results if Commerce has complied with the court's remand order in *Dalian III*, and its findings on remand are supported by substantial evidence on the record and otherwise in accordance with law. *See* 19 U.S.C. § 1516a(b)(1)(B)(i). For the following reasons, the court sustains the Third Remand Results.

The parties state in their respective comments that Commerce has complied with the court's remand order in *Dalian III*. *See, e.g.*, Ancientree's Reply at 1 ("At the Court's instructions, the Department removed the [Export Buyer's Credit] program for the Customers that were successfully verified. . . . The Court should uphold the remand results."); Alliance's Cmts. at 1 (stating "Commerce's *Third Remand Redetermination* complies with the Court's *Third Remand Opinion*"); *see also* Def.'s Resp. at 16 (maintaining that "Commerce's Remand Redetermination complies with both its statutory obligations and the Court's *Third Remand Order*," and asking the court to sustain the Third Remand Results).

The court agrees. On remand, as directed by the court, Commerce determined, for customers whose non-use of the Program was verified, a subsidy rate (2.79%) that excluded a subsidy amount for the Program. Additionally, Commerce recalculated Ancientree's Program rate (2.27%) and total subsidy rate (5.06%), and revised the all-others rate (18.17%) accordingly. *See supra* Parts IV.B and IV.C for calculations.

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[28] Commerce noted that a new individual subsidy rate of 11.99% was established for Ancientree in the third administrative review of the countervailing duty order, which covered the period of review from January 1, 2022, through December 31, 2022. Third Remand Results at 15; *see Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2022*, 89 Fed. Reg. 88,962 (Dep't of Commerce Nov. 12, 2024). The 11.99% rate now serves as Ancientree's cash deposit rate.

Then, Commerce adjusted the 2.79% subsidy rate (i.e., the rate for customers whose nonuse of the Program had been verified) by increasing that rate by the amount of any export subsidy offset that was granted in certain segments of the antidumping duty proceeding. Third Remand Results at 13–14; *see also supra* Part IV.D. Commerce found these the adjustments necessary to determine accurate subsidy rates for the customers whose non-use had been verified. *See* Third Remand Results at 13–14. Commerce also determined that it would direct Customs to revise the amount of cash deposits already collected, on entries made from August 12, 2019, to December 31, 2021, to reflect the rates determined on remand.

Though neither Ancientree nor the Alliance disputes that Commerce has complied with the court's order in *Dalian III*, each party argues, for different reasons, that the court should remand this matter a fourth time. Neither party's arguments, however, convince the court that remand is necessary.

I. Ancientree's Arguments in Favor of Remand Are Not Persuasive

The court first turns to Ancientree's arguments. Ancientree takes issue with the subsidy rates applied to entries made during an eight-month period, from April 1, 2021, to December 31, 2021. During these eight months, the periods of review of the second administrative review of the countervailing duty order and the second administrative review of the antidumping duty order overlapped.

As stated in the Background section, for this eight-month period, Commerce determined that "the applicable customer-specific [countervailing duty] rates . . . are simply the [countervailing duty] investigation rates with the [Program] rate included (13.33 percent) or without the [Program] rate included (2.79 percent), depending on whether the customer demonstrated non-use." Third Remand Results at 21; *see also id.* at 10 (Table 2, Column H).

Moreover, Commerce concluded that no adjustment to the customer-specific rate of 2.79% was necessary because no export subsidy offset was made in the second administrative review of the antidumping duty order: "unlike the prior periods – in which Commerce was required to increase the [countervailing duty] rate to reflect the applicable export subsidy offset already applied in a parallel [antidumping duty] administrative review – the period of April 1, 2021, through December 31, 2021, does not necessitate an adjustment because no export subsidy offset was granted in the [antidumping duty] proceeding covering this time period." Third Remand Results at 21.

In so finding, Commerce rejected Ancientree's argument that it would be unlawful to apply the 10.54% Program rate to any of its customers, regardless of their use or non-use of the Program, because questions related to the argument Ancientree now makes have previously been considered by Commerce and litigated before this Court:

> Ancientree asserts that Commerce should remove the [Program] subsidy rate [of 10.54%] for *all* Ancientree customers during this April 1, 2021, through December 31, 2021 period, rather than only removing the [Program] rate for cooperating customers [i.e., those whose non-use was verified]. Specifically, Ancientree asserts that, pursuant to [19 U.S.C. § 1677a(c)(1)(C)], in [antidumping duty] proceedings, Commerce "is ordered to increase the U.S. sales price of subject merchandise by the amount of any export subsidy found countervailable in the companion countervailing Order" and because Commerce "has not made this adjustment for the [Program] in the antidumping . . . [Second Antidumping Administrative Review Final Results], then it is unlawful for [Commerce] to apply the [Program rate]" in this (*i.e.*, the [countervailing duty]) segment. We disagree. Importantly, as Ancientree notes, [19 U.S.C. § 1677a(c)(1)(C)] directs Commerce to apply an export subsidy offset in determining the export price (and constructed export price) used to calculate an [antidumping duty] margin. This statutory directive is expressly limited to [antidumping duty] proceedings, not [countervailing duty] proceedings. As discussed above, the calculation of dumping margins in the parallel [antidumping duty] proceeding was the subject of separate litigation, in which the Court upheld Commerce's denial of an export subsidy offset because Ancientree failed to exhaust its administrative remedies before Commerce. The current ([countervailing duty]) litigation does not present an additional opportunity for Ancientree to seek redress in the parallel [antidumping duty] proceeding that is subject to separate litigation. As such, Commerce has made no changes to the customer-specific rates calculated for this overlapping period.

Id. at 21–22. In other words, for Commerce, Ancientree had an opportunity to argue that it was entitled to an export subsidy offset to the antidumping duty rate under the antidumping law in the *Ancientree* court action, where it lost. *See The Ancientree Cabinet Co.*, 48 CIT at __, 736 F. Supp. 3d at 1342. As a result of this loss, there is no basis for the adjustment that Ancientree now asks for, i.e., to remove the

10.54% Program rate from the total subsidy rates of customers whose non-use of the Program had not been verified.

Ancientree asks the court to find, as a matter of equity, that Commerce must exclude the 10.54% Program rate not only from the revised subsidy rates of those of its customers whose nonuse of the Program was verified, but also for those whose non-use was not verified, to avoid the imposition of a double remedy and to calculate accurate margins. For Ancientree, this request is justified because Commerce was required to grant an export subsidy offset in the Second Antidumping Administrative Review Final Results under 19 U.S.C. § 1677a(c)(1)(C). *See* Ancientree's Cmts. at 3 ("As the antidumping review final results have been adjudicated and do not offset the [Program], the only way for the Department to fulfill the statutory directive [under 19 U.S.C. § 1677a(c)(1)(C)] to avoid the double remedy is to adjust in this countervailing review. We submit that [the] Court should use it powers of equity to order this adjustment in compliance with the purpose of the law."). Ancientree's problem is that the issue was properly before the *Ancientree* Court, and the Court found as a matter of law that the company had failed to exhaust its administrative remedies—a ruling that Ancientree did not challenge.

While the court "possess[es] all the powers in law and equity of, or as conferred by statute upon, a district court of the United States," 28 U.S.C. § 1585, it finds that equity does not require remanding the Third Remand Results based on Ancientree's arguments.

Ancientree does not deny that it failed to exhaust the export subsidy offset issue before Commerce in the second antidumping duty administrative review, as this Court held in *The Ancientree Cabinet Co. v. United States*. That is, it did not request the offset in a timely manner. And, here, as in *Ancientree*, the company has offered no excuse or explanation for this omission. *Ancientree*, 48 CIT at __, 736 F. Supp. 3d at 1341 ("Ancientree provides no excuse for its failure to include the [offset] issue in its case brief . . . ."). Ancientree could have appealed the *Ancientree* Court's holding, but it chose not to. It would appear, then, that Ancientree's request for equitable relief is an effort to undo the consequences of its own tardiness in the antidumping duty proceeding. Equity will not come to the company's aid here.

II. The Alliance's Arguments in Favor of Remand Are Not Persuasive

The court next turns to the Alliance's arguments. For the Alliance, although Commerce complied with the court's remand order in *Dalian III*, the Third Remand Results lack the support of substantial

evidence and are not otherwise in accordance with law, and thus should be remanded. Alliance's Cmts. at 15 (requesting that the court "hold that Commerce's *Third Remand* [*Results* are] neither supported by substantial evidence nor in accordance with law and remand the redetermination back to the agency for further proceedings").

First, the Alliance argues that, unlike in the First and Second Remand Results, in the Third Remand Results Commerce unlawfully failed to address China's non-compliance with the Department's requests for information about the operation of the Program. For this reason, the Alliance contends that Commerce's Third Remand Results are unsupported by substantial evidence. Alliance's Cmts. at 11 ("Nowhere in the *Third Remand* [*Results*] does Commerce address [China's] failure to cooperate in the original investigation. Instead, Commerce's analysis is focused exclusively on the behavior of Ancientree's U.S. customers – who are not even interested parties to the proceeding. Thus, the *Third Remand* [*Results* are] not supported by substantial evidence.").

Next, the Alliance contends that the Third Remand Results are not in accordance with law to the extent Commerce determined customer-specific rates.[29] *Id.* at 14 ("The bottom line is that there is no legal basis in the statute, the regulations, or Commerce's practice to calculate customer-specific subsidy rates as Commerce has done in the *Third Remand* [*Results*]. Although it may have complied with [*Dalian III*], Commerce's decision to calculate and assess customer-specific subsidy rates is not in accordance with law and thus must be remanded."). The Alliance also challenges Commerce's recalculation of the all-others rate. *Id.* at 15.

Thus, for the Alliance, the court should have sustained the Final Determination, and never have issued the remand orders in *Dalian I*, *Dalian II*, or *Dalian III*.

The court denies the Alliance's request for a remand. As to the Alliance's substantial evidence arguments, it must be reiterated that prior to the Third Remand Results Commerce made its findings based on the idea that non-use could only be demonstrated if it knew the details of the Program's operation, but now we know that this is not the case. The non-use verification here showed that, with respect to certain of Ancientree's customers, not only was the use of adverse facts available not supported, but even the use of neutral facts available was not supported by substantial evidence because non-use was

[29] The customer-specific rates Commerce determined for different time periods, as described *supra* in Part IV.D.2, are found in Table 2 of the Third Remand Results.

actually demonstrated by the evidence on the record. For those of Ancientree's customers where that was done, there were no gaps in the record.

The whole idea of the third remand was to give Commerce an opportunity to use verified information to complete its investigation. *See* 19 U.S.C. § 1677m(i)(1). China's failure to comply with Commerce's requests for information created a gap in the record with respect to whether Ancientree's U.S. customers had used the Program—a question of fact. With respect to certain of those customers the fact of non-use had been confirmed by verified information. Thus, there was no need for Commerce to mention China's answers to questionnaires in the Third Remand Results because the questions relating to the Program's use, that might have been settled by China's complying with Commerce's requests for information, were determined, in part, from other sources. *See, e.g.*, *GPX Int'l Tire Corp.*, 37 CIT at 58–59, 893 F. Supp. 2d at 1332; *Fine Furniture (Shanghai) Ltd.*, 36 CIT at 1209, 865 F. Supp. 2d at 1260.

As to those customers that did not or could not demonstrate non-use of the Program, gaps in the record were created. These gaps resulted from China's failure to answer Commerce's questionnaires, and they were not filled in by information on the record because of these customers' failure to demonstrate non-use. For these customers not only were facts available applied but adverse inferences were used to determine their rate, which in turn, affected Ancientree's rate. It is worth noting that the Alliance does not complain about the manner of Commerce's various adjustments in the Third Remand Results, and so they cannot be the subject of any appeal.

Moreover, the court is not persuaded by the Alliance's argument that the Third Remand Results are not in accordance with law. The law requires that Commerce rely on verified information in reaching its final determination, in accordance with 19 U.S.C. § 1677m(i)(1). As stated in *Dalian III*:

> [I]n an investigation, Commerce must verify all information relied upon in making a final determination. Here, Commerce claims that it need not rely on the verified non-use of the Program for eight of Ancientree's U.S. customers, which represented approximately 79% of sales by value during the period at issue, because it was "unable to verify significant portions of the non-use information." But this "all or nothing" approach is not called for by the statute. Nothing in the statutory directive that Commerce "shall verify all information relied upon in making . . . a final determination in an investigation" suggests that unless

> *all* information is verified, *none* of the information that is actually verified can be relied upon to make a final determination. But here instead of relying on the non-use information on the record that the Department was able to verify, Commerce relied on adverse facts available as applied to all of Ancientree's U.S. sales.

Dalian III, 48 CIT at __, 719 F. Supp. 3d at 1335–36 (citing 19 U.S.C. § 1677m(i)(1)).

Next, as noted in *Dalian III*, there is a great deal of law discouraging the use of the failure of a third party (such as China) to comply with questionnaires as a basis for applying adverse facts available. *See, e.g.*, *Mueller Comercial de Mex., S. de R.L. de C.V. v. United States*, 753 F.3d 1227, 1235 (Fed. Cir. 2014) ("[I]f the cooperating entity has no control over the non-cooperating suppliers, a resulting adverse inference is potentially unfair to the cooperating party." (citing *SKF USA Inc. v. United States*, 630 F.3d 1365, 1375 (Fed. Cir. 2011))); *Changzhou Wujin Fine Chem. Factory Co. v. United States*, 701 F.3d 1367, 1378 (Fed. Cir. 2012) (where non-cooperating parties were unrelated to the respondent, "[d]eterrence is not relevant here, where the 'AFA rate' only impacts cooperating respondents. We find no support in our caselaw or the statute's plain text for the proposition that deterrence, rather than fairness or accuracy, is the 'overriding purpose' of the antidumping statute when calculating a rate for a cooperating party."); *see also Risen Energy, Co. v. United States*, 48 CIT __, __, 724 F. Supp. 3d 1356, 1361 (2024) ("Where a respondent is able to fill the gap caused by the noncooperation of another party, AFA may become inappropriate.").

As to the use of customer-specific rates, the court found:

> [O]n remand, for each customer whose non-use of the Program was verified Commerce must determine a customer-specific rate that excludes a subsidy amount for the Program, and recalculate Ancientree's total rate, and the all-others rate. The Department may determine its own method for complying with this order.

Dalian III, 48 CIT at __, 719 F. Supp. 3d at 1337–38. As noted, distinguishing "sales with respect to which verification was successful from those where it was not successful, is not entirely foreign to Commerce. Where Commerce has been able to verify non-use of the Program by a Chinese respondent's U.S. customers in past cases it has removed the Program subsidy rate from the respondent's total rate." *Id.* at __, 719 F. Supp. 3d at 1336 (citations omitted). In the Third Remand Results, Commerce determined customer-specific

rates that would only apply retroactively – not prospectively, as do cash deposit rates – and stated that it would instruct Customs to use those customer-specific rates to revise cash deposits made on entries whose liquidation has been enjoined pending the outcome of this litigation. Commerce explained that it would not "rely on the [customer-specific rates] to establish *prospective* customers-specific cash deposit rates," because, among other reasons, the countervailing duty statute directs the determination of an "estimated individual countervailable subsidy rate for each exporter and producer individually investigated." Third Remand Results at 10–11 (citing 19 U.S.C. § 1671d(c)(1)(B)(i)(I)).

Finally, as was noted in *Risen Energy Co. v. United States*, in all the cases of this kind that have been brought before this Court, there has been placed on the record only evidence of non-use of the Program and no evidence of actual use. *Risen Energy Co. v. United States*, 47 CIT __, __, 665 F. Supp. 3d 1335, 1344 (2023) ("At this stage, every piece of evidence presented to Commerce and to the court supports the conclusion that Risen's sales were not aided by the [Program]."); *see also id.* at __, 665 F. Supp. 3d at 1344 n.7 ("Commerce has . . . never found any evidence that any U.S. company has used the [Program].").

That being the case, and because the Alliance otherwise agrees with Ancientree and the Department that the Third Remand Results comply with the court's order in *Dalian III*, the court finds no basis for remanding this matter a fourth time.

CONCLUSION

Because Commerce has complied with the remand order in *Dalian III*, and the Third Remand Results are supported by substantial evidence and otherwise in accordance with law, the court sustains the Third Remand Results. Judgment shall be entered accordingly.

Dated: June 12, 2025
New York, New York

/*s*/ *Richard K. Eaton*
JUDGE

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