U.S. Court of International Trade

Slip Op. 18–93

UNITED STATES, Plaintiff, v. MARIOLA INTERNATIONAL COMPANY, Defendant.

Before: Leo M. Gordon, Judge
Court No. 17–00047

[Plaintiff's motion for default judgment granted.]

Dated: August 3, 2018

Jason M. Kenner, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for Defendant United States. With him on the brief were *Chad A. Readler*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Patricia M. McCarthy*, Assistant Director. Of counsel were *Drew Stevens*, Senior Attorney, Office of Associate Chief Counsel, U.S. Customs and Border Protection, of Miami, FL, and *Laura C. Hils*, Attorney-Advisor, Office of Chief Counsel, Alcohol and Tobacco Tax and Trade Bureau, of Cincinnati, OH.

OPINION

Gordon, Judge:

Before the court is the USCIT Rule 55(b) motion of Plaintiff United States ("Government") for default judgment in the amount of $854,005.12, a sum certain, plus pre- and post-judgment interest, and costs, against Defendant Mariola International Company ("Mariola") for the recovery of unpaid federal excise taxes ("FETs") pursuant to Section 592(d) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1592(d), and 28 U.S.C. § 1582(3) (2012).[1] *See* Pl.'s Mot. for Entry of Default J., ECF No. 15 ("Pl.'s Mot."); *see also* Compl., ECF No. 2. Defendant failed to answer the complaint, respond to Plaintiff's motion for default judgment, or otherwise appear in this action. Accordingly, the court grants Plaintiff's motion for default judgment and awards the United States $854,005.12.

Additionally, the Government seeks pre-judgment interest. The award of prejudgment interest lies within the sound discretion of the court based on considerations of equity and fairness. *See United States v. Goodman*, 6 CIT 132, 140, 572 F. Supp. 1284, 1289 (1983). In exercising its discretion, the court considers whether the Government

[1] FETs are considered customs duties for purposes of jurisdiction of the court. *See United States v. Maverick Mktg., LLC*, 42 CIT ___, 2018 WL 3246116 (July 3, 2018).

has delayed in assessing and collecting duties. *See United States v. Ford Motor Co.*, 31 CIT 1178, 1181 (2007). Here, the Government has prosecuted its claim without delay and repeatedly made formal demands on Mariola for payment. *See* Compl. ¶ 15. Consequently, equity favors the award of pre-judgment interest. *See Goodman*, 6 CIT at 140, 572 F. Supp.at 1289 (pre-judgment interest intended to make Government whole for what effectively amounts to interest-free loan to defendant).

Pre-judgment interest typically runs from the date of the Government's last formal demand for payment. *See Ford Motor Co.*, 31 CIT at 1182 n.3. However, because Mariola executed a statute of limitations waiver in exchange for the Government's continued consideration of the matter, *see* Compl. ¶ 3 & Ex. A, the "earliest equitable date from which to compute pre-judgment interest" is the date of the summons in this action, March 15, 2017. *See United States v. NYCC 1959 Inc.*, 40 CIT ___, ___, 182 F. Supp. 3d 1346, 1349 n.5 (2016); Summons, ECF No. 1. Accordingly, the court awards Plaintiff pre-judgment interest from March 15, 2017 to the date of entry of the judgment, at the rate provided in 26 U.S.C. § 6621.

The court also awards the Government post-judgment interest pursuant to 28 U.S.C. § 1961. *See United States v. Chavez*, 41 CIT ___, ___, 2017 WL 4546775 at *4 (Oct. 10, 2017). As to costs, USCIT Rule 55(b) provides for an award of costs upon entry of a default judgment when a plaintiff's claim is for a sum certain against a defendant who defaulted by not appearing and is neither a minor nor incompetent. Because the Plaintiff seeks a sum certain and there is no question as to the status of Defendant, the court awards costs to Plaintiff.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for default judgment is granted; it is further

ORDERED that judgment is entered for Plaintiff against Defendant Mariola for unpaid FETs on the subject merchandise in the amount of $854,005.12; it is further

ORDERED that Plaintiff is awarded pre-judgment interest on $854,005.12, accruing since March 15, 2017, the date of the summons, to the date of entry of the judgment, at a rate calculated in accordance with 26 U.S.C. § 6621; it is further

ORDERED that Plaintiff is awarded post-judgment interest, accruing as of the date of entry of the judgment, at a rate calculated in accordance with 28 U.S.C. § 1961; and it is further

ORDERED that Plaintiff is awarded costs as permitted by law.

Dated: August 3, 2018
New York, New York

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

Slip Op. 18–94

ATKORE STEEL COMPONENTS, INC., Plaintiff, v. UNITED STATES, Defendant.

Before: Jane A. Restani, Judge
Court No. 17–00077

[Commerce's remand results in a scope determination regarding cast iron electrical conduit articles sustained.]

Dated: August 3, 2018

David Forgue and *Brian Walsh*, Barnes, Richardson & Colburn, LLP, of Chicago, IL, for Plaintiff Atkore Steel Components, Inc.

Patricia McCarthy, Assistant Director, and *Kelly Krystyniak*, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for Defendant. Of counsel on the brief was *Brendan Saslow*, Office of Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, DC.

OPINION

Restani, Judge:

Before the court are the United States Department of Commerce ("Commerce")'s *Final Results of Redetermination Pursuant to Court Remand*, ECF No. 45–1 (July 11, 2018) ("*Remand Results*"), concerning Commerce's scope determination as to cast iron electrical conduit articles produced by Atkore Steel Components, Inc. ("Atkore"). No party raised any substantive objection to Commerce's *Remand Results*.[1] *See Plaintiff's Comments in Agreement with Commerce's Redetermination Pursuant to Court Remand*, ECF No. 47, at 1–3 (July 26, 2018) ("Atkore's Comments"). For the reasons stated below, Commerce's *Remand Results* are sustained.

BACKGROUND

The court assumes all parties are familiar with the facts of the case as discussed in *Atkore Steel Components, Inc. v. United States*, Slip Op. 18–52, 2018 WL 2215847 (CIT May 15, 2018) ("*Atkore I*"). For the sake of convenience, the facts relevant to this remand are summarized herein. Atkore applied for a scope ruling under 19 C.F.R. § 351.225, seeking confirmation that several of Atkore's cast iron electrical conduit articles were outside the scope of an antidumping order applicable to certain malleable iron pipe fittings ("MIPF") from the

[1] Atkore "disagrees" with Commerce's filing its *Remand Results* "under respectful protest," Atkore's Comments at 2; *Remand Results* at 2, but Commerce complied with the terms of the remand order, as discussed *infra*, and simply noted its protest in order to preserve its appellate rights, Remand Results at 2 n.5 (citing *Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1375–76 (Fed. Cir. 2003)).

People's Republic of China ("PRC"). *Atkore I*, at *1; *see Antidumping Duty Order: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 Fed. Reg. 69,376 (Dep't Commerce Dec. 12, 2003) ("Antidumping Order" or "Order"). In its Scope Ruling, Commerce originally determined that Atkore's conduit articles fell within the scope of the Antidumping Order. *Final Scope Ruling Concerning Cast Iron Electrical Conduit Articles*, A-570–881, ASCI—Electrical Conduits, at 6 (Dep't Commerce Mar. 16, 2017) ("Scope Ruling").

A scope analysis follows a three-step process: First, Commerce must "determine whether [the Antidumping Order's scope language] contains an ambiguity and, thus, is susceptible to interpretation. If the scope is unambiguous, it governs." *Meridian Prods., LLC v. United States*, 851 F.3d 1375, 1381 (Fed. Cir. 2017) (internal citations omitted). "If, however, the language of the scope order is ambiguous, Commerce more fully analyzes the sources listed in § 351.225(k)(1). Where those sources are dispositive, in other words, the history of the original investigation is clear, Commerce will close the scope ruling proceedings with a 'final scope ruling.'" *Atkore I*, at *3 (citing 19 C.F.R. § 351.225(d); *Antidumping Duties; Countervailing Duties*, 62 Fed. Reg. 27,296, 27,328 (Dep't Commerce May 19, 1997)). If the (k)(1) sources are not dispositive, "Commerce must initiate a formal 'scope inquiry' under § 351.225(e), and consider the factors listed in § 351.225(k)(2)." *Atkore I*, at *3.

In proceedings below, Commerce contended that it had based its Scope Ruling on the unambiguous scope language of the Antidumping Order, not on an analysis of the sources under 19 C.F.R. § 351.225(k)(1). *Id.* at *4. In relevant part, the scope language indicated that the Antidumping Order applied to: "[C]ertain malleable iron pipe fittings, cast, other than grooved fittings, from the [PRC]. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60, and 7307.19.90.80 of the Harmonized Tariff Schedule (HTSUS)." Antidumping Order, at 69,376 (the HTSUS numbers were included for illustrative purposes only). In ordering remand, the court determined "that the scope of the relevant order is not so clear that the conduit fittings in question are covered by the order, such that no further assessment is needed." *Atkore I*, at *4. Atkore argued that the term "pipe" was both undefined and ambiguous. *Id.* at *5. The court agreed, stating: "It is not clear from the terms of the Order that all non-grooved cast iron pipe fittings, regardless of physical differences, fall within 'certain malleable iron pipe fittings, cast, other than grooved fittings.'"

Id. at *5 (internal citations omitted). The court furthermore found that during scope proceedings Atkore had cited evidence of physical

differences from (k)(1) sources, differences which could distinguish Atkore's goods from those covered by the Antidumping Order, and which Commerce had failed to adequately address. *See id.* at *7. Accordingly, the court remanded Commerce's Scope Order with the following instructions:

> [A]ssess the factors set forth in 19 C.F.R. § 351.225(k)(1) indicated in Atkore's Scope Ruling Request,[2] including Atkore's evidence of alleged physical differences between its conduit fittings and the products subject to the Antidumping Order. Commerce shall take additional steps in accordance with the foregoing reasoning, including initiation of a formal scope inquiry and consideration of 19 C.F.R. § 351.225(k)(2) factors, if necessary.

Id. at *8.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c). This matter is reviewable under 19 U.S.C. § 1516a(a)(2)(B)(vi). "[T]he question of whether the unambiguous terms of [an antidumping duty order] control the inquiry, or whether some ambiguity exists, is a question of law" that the court reviews *de novo*. *Meridian*, 851 F.3d at 1382. Otherwise, Commerce's final results in an administrative review of a scope determination are upheld unless "unsupported by substantial evidence on the record, or otherwise not in accordance with law[.]" 19 U.S.C. § 1516a(b)(1)(B)(i); *see also Meridian*, 851 F.3d at 1381–82.

DISCUSSION

19 C.F.R. § 351.225(k)(1) directs Commerce to consider evidence from the following sources: "The descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission." On remand, Commerce weighed such evidence, "paying particular attention to" evidence of physical characteristics considered during the underlying antidumping investigation. *Remand Results*, at 7. Commerce stated that "a re-evaluation of . . . the (k)(1) sources above, further informs our understanding of the products covered by the [Antidumping Order] such that MIPF is built to [specific pressure and tensile strength] standards. Any in-scope product, intended to be used in the conveyance or retention of liquids or

[2] *Scope Ruling Request: Malleable Cast Iron Pipe Fittings from the People's Republic of China (A-570–881)*, A-570–881, ASCI—Electrical Conduits, at 4–6 (Dep't Commerce Oct. 4, 2016).

gas, would state that it conforms to those standards." *Id.* at 8–9. Commerce found that Atkore's articles made no mention of pressure ratings and were designed for use in electrical applications, not liquid or gas conveyance. *Id.* at 9–10. Accordingly, Commerce concluded that Atkore's articles fall outside the scope of the Antidumping Order. *Id.* at 10. Having found the (k)(1) factors dispositive, Commerce correctly declined to initiate a formal scope inquiry for the purpose of considering the 19 C.F.R. § 351.225(k)(2) factors. *See id.* at 5–11. The court thus finds that Commerce has complied with the terms of *Atkore I* and that Commerce's *Remand Results* are supported by substantial evidence.

CONCLUSION

For the foregoing reasons, Commerce's *Remand Results* are **SUSTAINED**. Judgment will enter accordingly.

Dated: August 3, 2018
New York, New York

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

Slip Op. 18–95

DAK AMERICAS LLC AND AURIGA POLYMERS INC., Plaintiffs, v. UNITED STATES, Defendant.

Before: Timothy C. Stanceu, Chief Judge
Court No. 17–00195

[Denying Defendant's Motion to Dismiss]

Dated: August 6, 2018

Paul C. Rosenthal, Kelley Drye & Warren, LLP, of Washington, D.C., for plaintiffs DAK Americas LLC and Auriga Polymers Inc. With him on the brief were *David C. Smith*, *Cameron R. Argetsinger*, and *Joshua R. Morey*.

Mikki Cottet, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for defendant. With her on the brief were *Chad A. Readler*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Franklin E. White, Jr.*, Assistant Director. Of counsel on the brief were *Suzanna Hartzell-Ballard* and *Jessica Plew*, Office of Assistant Chief Counsel, U.S. Customs and Border Protection.

OPINION AND ORDER

Stanceu, Chief Judge:

Plaintiffs challenge administrative actions of U.S. Customs and Border Protection ("Customs" or "CBP") demanding partial repayment of monetary distributions plaintiffs previously received under the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA" or "Byrd Amendment"). 19 U.S.C. § 1675c (2000) (repealed by Deficit Reduction Act of 2005, Pub. L. No. 109–171, § 7601(a), 120 Stat. 4, 154 (2006)). Plaintiffs are "affected domestic producers" ("ADPs"), which are parties eligible under the CDSOA to receive monetary distributions paid from duties collected under an antidumping duty ("AD") order on certain polyester staple fiber ("PSF") from the Republic of Korea (the "Korea PSF Order") and an AD order on PSF from Taiwan (the "Taiwan PSF Order"). Specifically, plaintiffs challenge the actions Customs took in issuing four letters, three of which were dated March 10, 2017 and one of which was dated May 26, 2017, demanding payment of amounts Customs characterized as having been disbursed erroneously to plaintiffs. Compl. ¶¶ 28–30, 36, 42, (July 26, 2017), ECF No. 2 ("Compl."). Plaintiffs seek an order setting aside the demands as unlawful, compelling Customs to return a payment already made by one of the plaintiffs, and enjoining Customs from continuing to make such demands. *Id.*, Relief Requested.

Before the court is defendant's motion to dismiss under USCIT Rule 12(b)(6) for failure to state a claim on which relief can be granted.

Mem. in Support of Def.'s Mot. to Dismiss (Dec. 18, 2017), ECF No. 12 ("Def.'s Br."). The court denies the motion.

I. BACKGROUND

Customs issued the demand letters following the settlement of separate litigation before this Court, to which plaintiffs were not parties. *See* Compl. ¶¶ 28–32; Order of Dismissal, *Nan Ya Plastics Corp., Am. v. United States*, Ct. No. 08–00138 (June 15, 2015), ECF No. 140 (Order of Dismissal following parties' Stipulation of Dismissal) ("*Nan Ya* Dismissal Order"). Nan Ya Plastics Corp., Americas ("Nan Ya"), also a domestic producer of PSF, was added retroactively to the list of ADPs published by the U.S. International Trade Commission ("ITC") for the Korea and Taiwan PSF orders, effective as of Fiscal Year 2007. Compl. ¶ 32. In the demand letters, Customs identified the payment of government funds to Nan Ya as the basis for the demands upon plaintiffs. Compl. ¶ 31.

A. The Korea and Taiwan PSF Orders

The U.S. Department of Commerce ("Commerce" or the "Department") and the ITC initiated antidumping duty investigations of PSF from the Republic of Korea and PSF from Taiwan in April 1999. *Initiation of Antidumping Duty Investigations: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 64 Fed. Reg. 23,053 (Int'l Trade Admin. Apr. 29, 1999); *Certain Polyester Staple Fiber From Korea and Taiwan*, 64 Fed. Reg. 17,414 (Int'l Trade Comm'n Apr. 9, 1999). After the ITC gave Commerce notice of its affirmative injury determination on May 15, 2000, Commerce published its amended final determinations of sales at less than fair value on May 25, 2000 and issued the Korea PSF Order and the Taiwan PSF Order. *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 Fed. Reg. 33,807–08 (Int'l Trade Admin. May 25, 2000). The Korea PSF Order and the Taiwan PSF Order remained in place as of May 2018. *See Polyester Staple Fiber From the Republic of Korea and Taiwan: Final Results of Changed Circumstances Reviews, and Revocation of Antidumping Duty Orders, in Part*, 83 Fed. Reg. 23,253 (Int'l Trade Admin. May 18, 2018).

B. The Parties to this Action

Plaintiffs DAK Americas LLC ("DAK Americas") and Auriga Polymers Inc. ("Auriga") are ADPs that were eligible to receive, and did

receive, CDSOA distributions under the Korea PSF Order. DAK also received disbursements in its capacity as a successor-in-interest to Wellman Inc. ("Wellman"), another ADP, under both the Korea PSF Order and the Taiwan PSF Order. Compl. ¶ 3; *see also* 19 C.F.R. § 159.61(b)(1)(i) (providing for successor companies to be eligible to receive CDSOA disbursements). Defendant in this action is the United States.[1]

C. The Continued Dumping and Subsidy Offset Act of 2000

In 2000, after the Korea and Taiwan PSF Orders were issued, Congress amended Title VII of the Tariff Act of 1930, adding section 754, the Continued Dumping and Subsidy Offset Act, codified at 19 U.S.C. § 1675c (2000). This "Byrd Amendment" was intended to strengthen the remedial effects of trade remedy laws. Trade remedies under the Tariff Act of 1930 were designed to neutralize the distortive effects of unfair trade practices (i.e., dumping and subsidization) by assessing equivalent duties that, prior to the passage of the CDSOA, were deposited to the U.S. Treasury and became available to pay general government expenses. *See Huaiyin Foreign Trade Corp. v. United States*, 322 F.3d 1369, 1379 (Fed. Cir. 2003) (explaining that, before the CDSOA, "the duties collected pursuant to the antidumping statute were deposited with the Treasury for general purposes"). In enacting the Byrd Amendment, Congress noted, among other findings, that "[t]he continued dumping or subsidization of imported products after the issuance of antidumping orders or findings or countervailing duty orders can frustrate the remedial purpose of the laws by preventing market prices from returning to fair levels." Continued Dumping and Subsidy Offset Act of 2000, Pub. L. No. 106–387, § 1(a), §1002(3), 114 Stat. 1549, 1549A-72 (2000). To afford further relief, the Byrd Amendment provided for duties assessed under AD and countervailing duty ("CVD") orders to be placed in "Special Accounts" established within the U.S. Treasury for each AD and CVD order and distributed to ADPs each fiscal year during which the relevant AD or CVD order remained in effect. 19 U.S.C. § 1675c(c)-(e) (2000); 19 C.F.R. § 159.64.[2] ADPs may receive CDSOA distributions

[1] In the Complaint, plaintiffs named as defendants the United States, U.S. Customs and Border Protection, and Kevin K. McAleenan, Acting Commissioner of Customs. These parties should be identified as a single defendant, the United States, and the court is ordering the caption to be modified accordingly.

[2] Under the Customs regulations implementing the CDSOA, funds enter the Special Accounts only after entries of the goods subject to the AD and/or CVD orders have been liquidated, meaning that duties have been finalized, collected, and deposited. Before liquidation occurs, duties collected by Customs (i.e., cash deposits) are placed in "clearing accounts." *See* 19 C.F.R. § 159.64(a). When entries are liquidated, the corresponding funds

as reimbursement for "qualifying expenditures," i.e., specified business expenditures such as manufacturing facilities, equipment, input materials, health benefits for employees, and "[w]orking capital or other funds needed to maintain production." 19 U.S.C. §§ 1675c(b)(4) (2000), 1675c(d)(2)-(3) (2000); 19 C.F.R. §159.61(c).

The CDSOA provided that a party may be designated as an ADP only if it "was a petitioner or interested party in support of the petition with respect to which an antidumping duty order, a finding under the Antidumping Act of 1921, or a countervailing duty order has been entered." 19 U.S.C. § 1675c(b)(1)(A) (2000). The statute set out the process for designation of ADPs, beginning with the ITC's forwarding to Customs a list of persons potentially eligible for ADP status—i.e., "a list of petitioners and persons with respect to each order and finding and a list of persons that indicate support of the petition by letter or through questionnaire response"— within sixty days of the issuance of an AD or CVD order. *Id.* §1675c(d)(1) (2000). Customs publishes lists of potential ADPs in the Federal Register annually for each AD and CVD order prior to making distributions. *Id.* § 1675c(d)(2). After parties on the list of potential ADPs certify that they desire a distribution and meet the eligibility criteria for ADPs, including by certifying that they have not yet received disbursements for the qualifying expenditures claimed, Customs distributes the assessed duties in the amounts claimed by eligible ADPs, making a pro rata distribution according to qualifying expenditures claimed in cases where the total amount claimed by ADPs exceeds the available funds in the relevant Special Account. *Id.* § 1675c(d)(2)-(3) (2000).

Not long into the Byrd Amendment's existence, eleven foreign nations challenged the Byrd Amendment before the World Trade Organization ("WTO"). In WTO proceedings, panels of the Dispute Resolution Body and the Appellate Body found Byrd Amendment distributions to be inconsistent with the commitments made by the United States in the Uruguay Round Agreements. Panel Report, *United States-Continued Dumping and Subsidy Offset Act of 2000*, WTO Docs. WT/DS217/R, WTDS234/R (adopted Sept. 16, 2002); Appellate Body Report, *United States-Continued Dumping and Subsidy Offset Act of 2000*, WTO Docs. WT/DS217/AB/R, WTDS234/AB/R (adopted Jan. 16, 2003). In February 2006, Congress repealed the Byrd Amendment by means of a provision in the Deficit Reduction Act of 2005, subject to a savings provision. Deficit Reduction Act of 2005, Pub. L. No. 109–171, § 7601(a), 120 Stat. 4, 154 (2006). The repeal provided that "[a]ll duties on entries of goods made and filed before

in the clearing accounts are transferred to Special Accounts, from which they are available for distribution to ADPs. *See* 19 C.F.R. § 159.64(b)(1).

October 1, 2007, that would, but for [the repeal], be distributed . . . shall be distributed as if section 754 of the Tariff Act of 1930 [i.e., 19 U.S.C. § 1675c] had not been repealed." *Id.* In 2010, Congress further limited distributions under the CDSOA, prohibiting payments from entries of goods that as of December 8, 2010 were "(1) unliquidated; and (2)(A) not in litigation; or (B) not under an order of liquidation from the Department of Commerce." Claims Resolution Act of 2010, Pub. L. No. 111–291, § 822, 124 Stat. 3064, 3162–63 (2010). The CDSOA was also amended by the Trade Facilitation and Enforcement Act of 2015 to provide authority for the government to deposit certain interest earned on antidumping and countervailing duties into Special Accounts created under the CDSOA. Pub. L. 114–125, § 605, 130 Stat. 122, 187–88 (2016).

D. The Nan Ya Litigation

Beginning with Fiscal Year 2001, the ITC compiled lists of potential ADPs under both the Korea PSF Order and the Taiwan PSF Order, and Customs published the lists annually. Plaintiffs—or their related or predecessor entities—appeared on these lists and have received CDSOA disbursements for many of the years during which the Korea PSF Order and Taiwan PSF Order have been in place.[3] Nan Ya did

[3] *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 66 Fed. Reg. 40,782, 40,799 (Aug. 3, 2001); *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 67 Fed. Reg. 44,722, 44,737 (July 3, 2002); *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 68 Fed. Reg. 41,597, 41,635–36 (July 14, 2003); *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 69 Fed. Reg. 31,162, 31,199 (June 2, 2004); *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 70 Fed. Reg. 31,566, 32,154 (June 1, 2005); *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 71 Fed. Reg. 31,336, 31,378, 31,380–81 (June 1, 2006); *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 72 Fed. Reg. 29,582, 29,625, 29,628 (May 29, 2007); *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 73 Fed. Reg. 31,196, 31,240 31,242 (May 30, 2008); *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 74 Fed. Reg. 25,814, 25,859, 25,861 (May 29, 2009); *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 75 Fed. Reg. 30,530, 30,575, 30,577 (June 1, 2010); *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 76 Fed. Reg. 31,020, 31,060, 31,062 (May 27, 2011); *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 77 Fed. Reg. 32,718, 32,759, 32,761 (June 1, 2012); *see also* U.S. Customs and Border Protection, Continued Dumping and Subsidy Offset Act, *CDSOA Data Organized by Fiscal Year*, *available at https://www.cbp.gov/trade/priorityissues/adcvd/continued-dumping-and-subsidy-offset-act-cdsoa-2000* (last accessed July 31, 2018). DAK Americas does not appear on the lists of potential ADPs published in the Federal Register, but a related entity ("E.I. du Pont de Nemours") does. E.I. du Pont de Nemours appears to be a related entity of DAK Americas based on CBP's annual CDSOA disbursement report for 2002, which shows a distribution to "DAK Fibers LLC (E.I. du Pont de Nemours)." *See* U.S. Customs and Border Protection, Continued Dumping and Subsidy Offset Act, *CDSOA Data Organized by Fiscal Year*, "CDSOA FY2002 Disbursements FINAL," *available at https://www.cbp.gov/sites/default/files/documents/fy2002_final_disb.pdf* (last accessed July 31, 2018). DAK Americas appears as a recipient of CDSOA funds on all of Customs' Annual CDSOA Disbursement

not appear as a potential ADP under the Korea PSF Order or the Taiwan PSF Order in any of the Federal Register notices or annual CDSOA disbursement reports issued by Customs for Fiscal Years 2001 through 2016.[4] Nan Ya nonetheless submitted a certification of eligibility as an ADP for Fiscal Year 2007 and on April 18, 2008 commenced an action against the United States asserting entitlement to its pro rata share of CDSOA disbursements issued under the Korea PSF Order and the Taiwan PSF Order, beginning in Fiscal Year 2007. Compl. ¶ 26; Def.'s Br. 4–5; Pls.' Mem. in Opp'n to Def.'s Mot. to Dismiss 2 (Jan. 22, 2018), ECF No. 13 ("Pls.' Br."); *see also Nan Ya Plastics Corp., Am. v. United States*, 36 CIT __, __, 853 F. Supp. 2d 1300, 1306–07 (2012) ("*Nan Ya I*"), *vacated in part*, 37 CIT __, __, 916 F. Supp. 2d 1376, 1380–82 (2013) ("*Nan Ya II*").

On July 12, 2012, a three judge panel of this Court granted the government's motion to dismiss the *Nan Ya* action for failure to state a claim upon which relief could be granted. *Nan Ya I*, 36 CIT at __, 853 F. Supp. 2d at 1314. On the following day, July 13, 2012, the Court of Appeals for the Federal Circuit ("Court of Appeals") ruled in *PS Chez Sidney, L.L.C. v. U.S. Int'l Trade Comm'n*, stating:

> We hold that when a U.S. producer assists investigation by responding to questionnaires but takes no other action probative of support or opposition, the producer has supported the petition under [19 U.S.C.] § 1675c(d) and is eligible for distributions if it can otherwise make the required certification that it has been injured.

684 F.3d 1374, 1382 (Fed. Cir. 2012). The Court of Appeals in *Chez Sidney* noted that implementing its decision "may be as simple as directing the ITC to release funds from the special account," but that it also "may require the Court of International Trade to exercise its

Reports for Fiscal Years 2002 to 2011, as alleged in the Complaint. Compl. ¶ 2. The court need not rely on CBP's reports because it credits the allegations in plaintiffs' Complaint for purposes of ruling on the motion to dismiss.

[4] Nan Ya first appeared as a potential ADP (under both the Korea PSF Order and the Taiwan PSF Order) in the Federal Register publication providing notice of distributions for Fiscal Year 2017. *Distributions of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 82 Fed. Reg. 25,052, 25,093, 25,095 (May 31, 2017). Nan Ya also appeared on the list published in the Federal Register for Fiscal Year 2018. *Distributions of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 83 Fed. Reg. 25,116, 25,156, 25,159 (May 31, 2018). Nan Ya does not appear as a distributee under the Korea PSF Order or the Taiwan PSF Order in any of Customs' annual CDSOA disbursement reports, which stopped including the Taiwan PSF Order after 2012 and the Korea PSF Order after 2014 (each following multiple years of $0 in disbursements). *See* U.S. Customs and Border Protection, Continued Dumping and Subsidy Offset Act, *CDSOA Data Organized by Fiscal Year*, *available at https://www.cbp.gov/trade/priority-issues/adcvd/continued-dumping-and-subsidy-offset-actcdsoa-2000* (last accessed July 31, 2018).

power to award a money judgment" against the United States. *Id.* 684 F.3d at 1384 (internal citations omitted). Following the decision of the Court of Appeals in *Chez Sidney*, this Court vacated its July 12, 2012 judgment dismissing the action in *Nan Ya* and issued a new judgment pursuant to USCIT Rule 54(b) dismissing only Nan Ya's constitutional claims and allowing Nan Ya's statutory claims to proceed upon a third amended complaint. In the third amended complaint, Nan Ya alleged that Nan Ya, like Chez Sidney, had selected the "support" box in responding to the ITC's preliminary questionnaire and the "take no position" box in responding to the ITC's final questionnaire. *See Nan Ya II*, 916 F. Supp. 2d at 1381–82. Nan Ya claimed that it could not be denied status as an ADP merely because it had selected the "take no position" options on the petition support portions of its questionnaire responses submitted to Commerce in relation to the investigations resulting in the Korea and Taiwan PSF Orders. *See id.*, 916 F. Supp. 2d at 1379–81; Compl. ¶¶ 26–27. Nan Ya argued that denial of ADP status was unjustified because Nan Ya had never actually *opposed* the petitions and had in fact chosen the "support" option at the earlier preliminary stage. *See Nan Ya II*, 916 F. Supp. 2d at 1379–81.

Following the filing of the third amended complaint in *Nan Ya*, the United States and Nan Ya agreed to a settlement of the *Nan Ya* lawsuit. Compl. ¶ 32; *see also Nan Ya* Dismissal Order. Defendant, citing the Complaint in this case, states that because the remaining funds in the Special Accounts corresponding to the AD orders were insufficient to pay the entire settlement, the balance of the *Nan Ya* settlement was funded by drawing from the judgment fund of the U.S. Treasury. Def.'s Br. 5 n.4 (citing Compl. ¶ 32).

E. Procedural History of this Action

Customs issued the demand letters to DAK Americas, Auriga, and Wellman nearly two years after the *Nan Ya* settlement, in March and May 2017. Compl. ¶¶ 28–32. Customs sought from DAK Americas a total of $674,449.34, comprising $231,148.82 in CDSOA distributions DAK Americas received under the Korea PSF Order as well as $219,662.91 Wellman received under the Korea PSF order and $223,637.61 Wellman received under the Taiwan PSF Order. Compl. ¶¶ 28–29. From Auriga, Customs demanded repayment of $11,548.84 received under the Korea PSF Order. *Id.* ¶ 30. Customs sent another letter to Auriga in May 2017 demanding an additional repayment of $95,079.75 in CDSOA distributions Auriga received under the Korea PSF Order for Fiscal Year 2010, which Customs noted "should have been included" in its earlier letter to Auriga. Compl. ¶ 30. As authority for the repayment demands contained in the four letters, Customs

provided citations to 19 C.F.R. § 159.64(b)(3) and the *Nan Ya* lawsuit. *Id.* ¶¶ 30–32. Auriga has repaid the sum of $11,548.84 demanded by Customs in its initial March 2017 letter. *Id.* ¶ 33. Other than this payment, neither DAK nor Auriga has repaid to Customs any of the amounts demanded. *Id.* ¶¶ 33–34.

Plaintiffs commenced this action on July 26, 2017. Compl. Plaintiffs claim the demands for repayment are unlawful because the CDSOA distributions received by plaintiffs have become "final and conclusive" under the Customs regulation. *Id.* ¶¶ 35–42 (citing 19 C.F.R. § 159.64(f)). Plaintiffs contend that the demand letters issued by Customs are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706." *Id.* ¶ 42. Plaintiffs seek an order (1) declaring that Customs does not have authority to demand repayment of the CDSOA distributions, (2) declaring that existing distributions to the plaintiffs are final and conclusive, and (3) ordering Customs to refund to Auriga the $11,548.84 repayment that Auriga made in response to a demand by Customs. *See id.*, Relief Requested.

On July 19, 2018, the court held oral argument on defendant's motion to dismiss. Oral Argument (July 19, 2018), ECF No. 17.

II. DISCUSSION

A. Motions to Dismiss for Failure to State a Claim on which Relief Can Be Granted

In ruling on a USCIT Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, the court accepts as true all well-pled factual allegations and draws all reasonable inferences in a plaintiff's favor. *United States v. Nitek Elecs., Inc.*, 844 F. Supp. 2d 1298, 1302 (Fed. Cir. 2012) (citing *Cedars–Sinai Med. Ctr. v. Watkins*, 11 F.3d 1573, 1584 n.13 (Fed. Cir. 1993)). A plaintiff's factual allegations must be "enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Furthermore, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). Although a court primarily considers the allegations as set out in the complaint, it "may also look to matters incorporated by reference or integral to the claim, items subject to judicial notice, [and] matters of public record." *Dimare Fresh, Inc. v. United States*, 808 F.3d 1301, 1306 (Fed. Cir. 2015) (internal quotation marks and citation omitted).

B. This Action Cannot Be Dismissed According to USCIT Rule 12(b)(6)

Defendant argues, first, that the court must dismiss plaintiffs' case because "plaintiffs have failed to allege facts upon which the Court can conclude that Customs acted unlawfully" according to the standard set forth in the Administrative Procedure Act ("APA"). Def.'s Br. 9 (citing the APA, 5 U.S.C. § 706, under which a court must hold unlawful agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law). In support of this argument, defendant submits that "plaintiffs' claim fails as a matter of law because the Appropriations Clause of the United States Constitution, coupled with the language of the CDSOA, authorizes and requires Customs to seek repayment of CDSOA overpayments." *Id.*

Defendant's first argument does not convince the court that this action must be dismissed. The case, brought under the jurisdictional grant of 28 U.S.C. § 1581(i), arises under the APA. Accordingly, the court must construe plaintiffs' claims as presenting the narrow question of whether the four actions taken by means of the demand letters were contrary to law according to the APA standard. The larger and more general question of whether the United States is authorized, or required, by the Constitution or the CDSOA to seek repayment of CDSOA payments extends beyond the claims in this case and, potentially, beyond the reach of the court's subject matter jurisdiction. Plaintiffs' claims are directed to actions Customs has taken, not to other types of actions the United States might take in the future. Even were the court to presume, *arguendo*, that Customs is authorized to seek repayment of CDSOA overpayments, the court could not conclude at this early stage of the litigation that Customs necessarily acted lawfully in taking the actions that are being challenged in this litigation.

Defendant's second argument in favor of dismissal is that "[e]ven assuming, for the sake of argument, the Appropriations Clause did not prohibit retention of CDSOA overpayments, the plaintiffs' claims would still fail as a matter of law because the plain language of 19 C.F.R. § 159.64 does not prohibit or otherwise constrain Customs from seeking collection of any CDSOA overpayments." *Id.* at 9–10. This, too, is not the issue presented by plaintiffs' claims. According to a fact pled in the Complaint, which for purposes of ruling on defendant's motion the court must presume to be true, Customs cited § 159.64(b)(3) as authority for its demands. Compl. ¶ 31. In a challenge to agency action under section 706 of the APA, "[t]he grounds upon which an administrative order must be judged are those upon which

the record discloses that its action was based." *Changzhou Wujin Fine Chem. Factory Co. v. United States*, 701 F.3d 1367, 1377 (Fed. Cir. 2012) (quoting *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943)) (internal quotation marks omitted). Therefore, the question presented by this case is not, as defendant would have it, whether § 159.64 prohibits or otherwise constrains Customs from seeking collection of any CDSOA overpayments but whether that regulatory provision authorizes the particular actions Customs took by issuing the four demand letters.

The court cannot conclude that the Customs actions challenged in this litigation either were, or were not, authorized by § 159.64(b)(3) by considering only the factual allegations in the Complaint, the text of the regulation, and such other public documents as the court may consider. The first sentence in the cited provision reads as follows:

> *Overpayments to affected domestic producers.* Overpayments to affected domestic producers resulting from subsequent reliquidations and/or court actions and determined by Customs to be not otherwise recoverable from corresponding Special Account as set out in paragraph (b)(2) of this section will be collected from the affected domestic producers.

19 C.F.R. § 159.64(b)(3).[5] The parties disagree on whether § 159.64(b), which in paragraph (2) refers to refunds to importers following reliquidations of "underlying entries composing a prior distribution" and "refunds to importers resulting from any court action involving those entries," authorized the demand letters at issue in this case, which did not arise from refunds to importers but instead from what Customs apparently concluded were overpayments to ADPs resulting from the retroactive designation of an additional ADP. But even were the court to presume that the regulation, in paragraph (b)(3), authorizes Customs to make demands upon ADPs to recover payments arising from the retroactive designation of an additional ADP, the court still could not conclude that plaintiffs' action must be dismissed. Without viewing the demand letters and related record documents, the court cannot examine the underlying determinations Customs made, nor can it consider the "grounds" on "which the record discloses that" the agency's "action[s] w[ere] based." *Changzhou Wujin*, 701 F.3d at 1377. For example, plaintiffs allege that the demand letters

[5] Paragraph (b)(2) of the section provides as follows:

> *Refunds resulting from reliquidation or court action*. If any of the underlying entries composing a prior distribution should reliquidate for a refund, such refund will be recovered from the corresponding Special Account. Similarly, refunds to importers resulting from any court action involving those entries will also be recovered from the corresponding Special Account. Refunds to importers will not be delayed pending the recovery of overpayments from domestic producers as set out in paragraph (b)(3) of this section.

contained "a citation to the *Nan Ya* lawsuit," Compl. ¶ 31, but the court cannot determine at this stage of the litigation that the *Nan Ya* lawsuit, or a particular aspect of that lawsuit, was what Customs determined to be the "court action" that it considered to constitute the basis for the recovery of "overpayments," as those terms are used in 19 U.S.C. § 159.64(b)(3).

Defendant's final argument in favor of dismissal is that "to the extent that any ambiguity exists in the CDSOA and 19 U.S.C. § 159.64, Customs' interpretation of the statute and regulation must be afforded deference and applied to authorize collection of any CDSOA overpayments." Def.'s Br. 10. Defendant summarizes its arguments by stating that "plaintiffs' claim does not rest upon a plausible legal theory" and that plaintiffs "can prove no set of facts that would demonstrate that Customs acted unlawfully or that would entitle them to relief." *Id.* at 24. As the court has explained, defendant has not shown that dismissal would be required even were the court to presume, *arguendo*, that 19 U.S.C. § 159.64, as a general matter, authorizes demand letters such as those at issue in this case. Adjudicating plaintiffs' claims will require judicial review on the agency record, which has not yet been filed.

III. CONCLUSION AND ORDER

For the reasons discussed above, the court may not dismiss this action according to USCIT Rule 12(b)(6) for failure to state a claim on which relief can be granted. Therefore, the court must deny defendant's motion.

Upon consideration of defendant's motion to dismiss, upon all papers and proceedings had herein, and upon due deliberation, it is hereby

ORDERED that Defendant's Motion to Dismiss (Dec. 18, 2017), ECF No. 12, be, and hereby is, denied; it is further

ORDERED that the parties shall file, on or before August 31, 2018, a proposed schedule in accordance with USCIT Rule 56.1 to govern further proceedings in this case; and it is further

ORDERED that the caption be amended to read as it appears on this Opinion and Order.

Dated: August 6, 2018
New York, New York

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

Slip Op. 18–96

ALUMINUM EXTRUSIONS FAIR TRADE COMMITTEE, Plaintiff, v. UNITED STATES, Defendant, and INNOVATIVE OUTDOOR SOLUTIONS, INC., Defendant-Intervenor.

Before: Timothy C. Stanceu, Chief Judge
Court No. 17–00179

[Denying plaintiff's motion for a stay of proceedings and enlarging the time period for the filing of plaintiff's motion for judgment on the agency record]

Dated: August 8, 2018

Robert E. DeFrancesco, III, Wiley Rein LLP, of Washington, D.C., for plaintiff Aluminum Extrusions Fair Trade Committee. With him on the motion were *Alan H. Price* and *Derick G. Holt*.

Aimee Lee, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for defendant. With her on the memorandum in opposition were *Chad A. Readler*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Reginald T. Blades, Jr.*, Assistant Director. Of counsel on the memorandum in opposition was *Jessica R. DiPietro*, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce.

Richard P. Ferrin, Drinker Biddle & Reath LLP, of Washington, D.C., for Defendant-Intervenor Innovative Outdoor Solutions, Inc. With him on the memorandum in opposition was *Douglas J. Heffner*.

OPINION AND ORDER

Stanceu, Chief Judge:

Plaintiff Aluminum Extrusions Fair Trade Committee (the "Committee"),[1] requests that the court stay proceedings in this action until thirty days following the final resolution of two cases that, at the time of the motion, were pending before the Court of Appeals for the Federal Circuit ("Court of Appeals"). Mot. to Stay Proceedings Pending Final Resolution of Ct. of Appeals for the Fed. Cir. Case Nos. 16–2657 and 17–1117 and Consent Mot. for an Extension of Time to File Pl.'s Rule 56.2 Mot. and Supp. Brief 1, 8 (Feb. 13, 2018), ECF No. 24 ("Mot. to Stay"). Specifically, plaintiff requests a stay of further proceedings in this action pending final resolution of the litigation in *Meridian Prods., LLC v. United States* (Ct. No. 13–00246) ("*Meridian*"), and *Whirlpool Corp. v. United States* (Ct. No. 14–00199) ("*Whirlpool*"). *See* Mot. to Stay 1–2.

Plaintiff requests, should the court deny the motion to stay, an extension of ten days from the date of the court's decision to file a Rule 56.2 motion for judgment on the agency record and supporting brief.

[1] The Aluminum Extrusions Fair Trade Committee participated in the administrative proceeding that is subject to the challenge before the court. Amended Compl. ¶ 3 (Oct. 17, 2017), ECF No. 21. Plaintiff was also a petitioner in the underlying antidumping duty ("AD") and countervailing duty ("CVD") investigations. *Id.* ¶ 5.

Mot. to Stay 2. Defendant and defendant-intervenor Innovative Outdoor Solutions, Inc. ("IOS") oppose the Committee's motion to stay but do not oppose a ten-day extension. Def.'s Opp'n to Pl.'s Mot. to Stay Proceedings (Mar. 5, 2018), ECF No. 25 ("Def.'s Opp'n"); Def.-Int.'s Opp'n to Pl.'s Mot. to Stay Proceedings (Mar. 5, 2018), ECF No. 26; Mot. to Stay 9. For the reasons set forth below, the court denies plaintiff's motion for a stay. The court will grant plaintiff an extension of ten days from the date of this Opinion and Order to file its Rule 56.2 motion for judgment on the agency record.

I. BACKGROUND

In this action, plaintiff contests a scope ruling issued by the International Trade Administration, U.S. Department of Commerce ("Commerce" or the "Department") concluding that certain "kayak stabilizer kits" produced by IOS are not within the scope of the antidumping duty ("AD") and countervailing duty ("CVD") orders (together, the "Orders") on aluminum extrusions from the People's Republic of China.[2] *See Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on IOS Certain Products* at 1–2 (Int'l Trade Admin. June 9, 2017) (P.R. Doc. 58), *available at* https://enforcement.trade.gov/download/prc-ae/scope/106-certain-ios-products-20jun17.pdf (last visited August 7, 2018) ("*Final Scope Ruling*").

IOS's kayak stabilizer kits include "an extruded aluminum adjustable center section, extruded aluminum tubes, an aluminum bar custom-machined end piece, and an adjustable extruded aluminum tube." *Final Scope Ruling* at 27 (footnote omitted). In its complaint, plaintiff claims that Commerce improperly determined that the kayak stabilizer kits were excluded from the Orders and, specifically, argues that Commerce wrongly concluded that the goods qualified for the "finished goods kit" exclusion specified in the scope language of the Orders. Amended Compl. ¶¶ 14, 17, 19 (Oct. 17, 2017), ECF No. 21 ("Compl."). Plaintiff also claims that the Department's finding that certain steel brackets in IOS's kayak stabilizer kits were not "fasteners" within the meaning of the finished goods kit exclusion was unlawful because it was inconsistent with previous findings in which brackets have been considered fasteners. *Id.* ¶ 17. Furthermore, plaintiff claims that the kayak stabilizer kits do not qualify as a "final finished good" and instead should be treated as a "subassembly" for

[2] The AD and CVD orders relevant to this case are published as *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 Fed. Reg. 30,650 (Int'l Trade Admin. May 26, 2011) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 Fed. Reg. 30,653 (Int'l Trade Admin. May 26, 2011) (together, the "Orders"). The scope language of the Orders is identical in relevant part.

purposes of the Orders. *Id.* ¶¶ 19–21. Plaintiff alleges that Commerce's decision is inconsistent with the Department's prior scope rulings on aluminum extrusions from China, including rulings on "towel racks, flag pole sets, patio door kits, and event décor parts and kits." *Id.* ¶ 23.

II. DISCUSSION

"The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). A decision as to "[w]hen and how to stay proceedings is within the sound discretion of the trial court." *Cherokee Nation of Oklahoma v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997) (internal citations omitted).

Plaintiff contends that a stay is warranted because the final and conclusive outcome of the litigation in *Meridian* and *Whirlpool* (including all future appeals and remands) could "streamline the issues" or be "potentially dispositive" of this action. *See* Mot. to Stay 6. Both of these cases were on appeal at the time plaintiff filed its motion to stay but since have been addressed in decisions by the Court of Appeals. *See Meridian Prods., LLC v. United States*, 890 F.3d 1272 (Fed. Cir. 2018); *Whirlpool Corp. v. United States*, 890 F.3d 1302 (Fed. Cir. 2018). Neither decision is final and conclusive; both necessitate that this Court issue remands to Commerce for further proceedings.

The court disagrees with plaintiff's argument that the final dispositions in *Meridian* and *Whirlpool* will be directly relevant to its case. *Meridian* and *Whirlpool* involve products (oven door and refrigerator door handles, respectively) that are dissimilar from the kayak stabilizers at issue in this case. Moreover, the opinions of the Court of Appeals do not provide a reason to conclude that the final resolution of those disputes will be instructive on any issue in this case, including in particular the issue of the meaning of the "finished goods kit" exclusion.

In *Meridian*, the Court of Appeals stated that "[g]iven Commerce's finding that the end caps are fasteners, the Type B handles are not excluded under the 'finished goods kit' provision." 890 F.3d at 1279. The Court of Appeals further concluded "that Commerce's original scope ruling that the Type B handles are not excluded from the scope of the order under the 'finished goods kit' exclusion provision is reasonable and supported by substantial evidence." *Id.*, 890F.3d at 1281. The Court of Appeals directed that "[i]f Commerce determines that the Type B handles are imported unassembled, then its original scope

ruling controls and the inquiry ends," but "[i]f Commerce determines the Type B handles are imported fully and permanently assembled, then we direct Commerce to address the question of whether the Type B handles are excluded from the scope of the antidumping and countervailing duty order as 'finished merchandise.'" *Id.* In short, nothing in the opinion issued by the Court of Appeals suggests that the "finished goods kit" exclusion could apply to the goods at issue in that case.

In *Whirlpool*, the Court of Appeals observed that "because *the finished goods kit exclusion is inapplicable to Whirlpool's assembled handles*, so too is the fasteners exception to the finished goods kit exclusion." 890 F.3d at 1311 (emphasis added). The issue remaining in *Whirlpool* is whether the "assembled handles meet the requirements for the finished merchandise exclusion," *id.*, 890 F.3d at 1312, not the finished goods kit exclusion.

III. CONCLUSION AND ORDER

Upon consideration of the Committee's Motion to Stay Proceedings Pending Final Resolution of Court of Appeals for the Federal Circuit Case Nos. 16–2657 and 17–1117 and Consent Motion for an Extension of Time to File Plaintiff's Rule 56.2 Motion and Supporting

Brief (Feb. 13, 2018), ECF No. 24, upon all papers and proceedings had herein, and upon due deliberation, it is hereby

ORDERED that plaintiff's motion be, and hereby is, denied to the extent that it seeks a stay of proceedings in this action; it is further

ORDERED that plaintiff's motion is granted to the extent that it seeks an extension of ten (10) days from the date of this Opinion and Order for the filing of the Rule 56.2 motion for judgment on the agency record and brief in support thereof; and it is further

ORDERED that plaintiff's motion for judgment on the agency record and supporting brief shall be filed no later than August 20, 2018.

Dated: August 8, 2018
New York, New York

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