

# U.S. Customs and Border Protection



## **PROPOSED REVOCATION OF SIX RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF MENORAH'S**

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

**ACTION:** Notice of proposed revocation of six ruling letters and proposed revocation of treatment relating to the tariff classification of menorahs.

**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 six ruling letters concerning the tariff classification of menorahs 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 May 7, 2021.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229-1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325-1757.

**FOR FURTHER INFORMATION CONTACT:** Karen S. Greene, Chemicals, Petroleum, Metals & Miscellaneous Branch, Regulations and Rulings, Office of Trade, at (202) 325-0041.

**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 six ruling letters pertaining to the tariff classification of a menorah. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) J82947, dated April 7, 2003 (Attachment A), NY I84339, dated July 22, 2002 (Attachment B), NY E80531, dated April 27, 1999 (Attachment C), NY D86109, dated January 4, 1999 (Attachment D), NY D86108 (Attachment E), dated January 14, 1999, and NY D85910, dated January 5, 1999 (Attachment F), 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 J82947, NY I84339, NY E80531, NY D86109, NY D86108, and NY D85910, CBP classified a menorah in subheading 9505.90.60, HTSUS. Subheading 9505.90.60, HTSUS provides for "Festive, car-

nival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other.”

CBP has reviewed NY J82947, NY I84339, NY E80531, NY D86109, NY D86108, and NY D85910 and has determined the ruling letters are in error.

It is now CBP’s position that a menorah that holds candles is properly classified in heading 9405, HTSUS, specifically in subheading 9405.50.40, HTSUS, which provides for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: Non-electrical lamps and lighting fittings: Other.”

An electric plastic menorah (NY D86109) is classified in subheading 9405.40.84, HTSUS, which provides for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: Other.”

Both the menorah that holds candles and the electric menorah are eligible for duty free treatment pursuant to subheading 9817.95.01, HTSUS, which provides for “Articles classifiable in subheadings 3924.10, 3926.90, 6307.90, 6911.10, 6912.00, 7013.22, 7013.28, 7013.41, 7013.49, 9405.20, 9405.40 or 9405.50, the foregoing meeting the descriptions set forth below: Utilitarian articles of a kind used in the home in the performance of specific religious or cultural ritual celebrations for religious or cultural holidays, or religious festive occasions, such as Seder plates, blessing cups, menorahs or kinaras.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY J82947, NY I84339, NY E80531, NY D86109, NY D86108, and NY D85910, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H310688, set forth as Attachment G to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,  
*Director*  
*Commercial and Trade Facilitation Division*

HQ H310688  
OT:RR:CTF:CPMM H310688 KSG

CATEGORY: Classification  
TARIFF NO.: 9405.50, 9405.40; 9817.95.01

MS. AMANDA WILSON  
DILLARD'S, INC.  
1600 CANTRELL ROAD  
LITTLE ROCK, AR 72201

MS. JENNY DAVENPORT  
WAL\*MART STORES, INC.  
MAIL STOP #0410 - L - 32  
601 N. WALTON  
BENTONVILLE, AR 72716-0410

MR. PAUL A. BARKAN AND MR. ASHER RUBINSTEIN  
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN  
245 PARK AVENUE  
33RD FLOOR  
NEW YORK, NEW YORK 10167-3397

RE: Revocation of NY J82947, NY I84339, NY E80531, NY D86109, NY D86108, and NY D85910; tariff classification of menorah

DEAR XX:

This letter is in reference to New York Ruling Letter (NY) J82947, NY I84339, NY E80531, NY D86109, NY D86108, and NY D85910, regarding the classification of a menorah in the Harmonized Tariff Schedule of the United States (HTSUS).

In NY J82947, NY I84339, NY E80531, NY D86108, and NY D85910, U.S. Customs & Border Protection (CBP) classified a menorah in subheading 9505.90.60, HTSUS, which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other."

We have reviewed NY J82947, NY I84339, NY E80531, NY D86109, NY D86108, and NY D85910, and determined that the rulings are in error. Accordingly, for the reasons set forth below, CBP is revoking NY J82947, NY I84339, NY E80531, NY D86109, NY D86108, and NY D85910.

**FACTS:**

All of the cases except NY D86109 involve a menorah that holds nine candles and is used in the home in celebration of Hanukkah.

NY D86109 involves a plastic electrical menorah that has nine light bulbs (instead of the traditional candles) that would be used in the home in celebration of Hanukkah.

**ISSUE:**

Whether the menorahs are properly classified in heading 9505 as a festive article or in heading 9405 as lamps or lighting fittings with a secondary classification in subheading 9817.95.01.

**LAW AND ANALYSIS:**

Classification under the HTSUS is 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. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

The HTSUS subheadings under consideration are the following:

9405	Lamps and lighting fittings including searchlights and spot-lights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.40	Other electric lamps and lighting fittings:
9405.40.84	Other:
	Other
9405.50	Non-electrical lamps and lighting fittings:
9405.50.40	Other
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:
9505.90	Other:
9505.90.60	Other
9817.95	Articles classifiable in subheadings 3924.10, 3926.90, 6307.90, 6911.10, 6912.00, 7013.22, 7013.28, 7013.41, 7013.49, 9405.20, 9405.40 or 9405.50, the foregoing meeting the descriptions set forth below:
9817.95.01	Utilitarian articles of a kind used in the home in the performance of specific religious or cultural ritual celebrations for religious or cultural holidays, or religious festive occasions, such as Seder plates, blessing cups, menorahs, or kinaras

Chapter Note 1(w), Chapter 95, HTSUS, excludes “Tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen and similar articles having a utilitarian function (classified according to their constituent material)” from Chapter 95.

Presidential Proclamation No. 8097, 72 Fed. Reg. 453 (Jan. 4, 2007), added Note 1(v) to Chapter 95 (Now Note 1(w)) to Chapter 95). The addition of Note 1(w) in 2007 precludes certain utilitarian articles from classification under heading 9505, HTSUS.

Menorahs are utilitarian articles used in the celebration of a holiday that would be excluded from Chapter 95 by Chapter Note 1(w). For instance, CBP

classified Hanukkah candles in subheading 9817.95.01, HTSUS, in Headquarters Ruling Letter (HQ) H269230, dated November 24, 2015, rather than in heading 9505. Since Chapter Note 1(w) was added to Chapter 95 in 2007, NY J82947, NY I84339, NY E80531, NY D86109, NY D86108, and NY D85910 are now incorrect and void by operation of law.

Traditional menorahs that hold candles would be classified in subheading 9405.50.40, HTSUS, because they are non-electrical. The plastic electrical menorah would be classified in subheading 9405.40.84, HTSUS.

Both the traditional and electrical menorahs would be eligible for duty-free treatment in accordance with subheading 9817.95.01, HTSUS as articles primarily classified in subheadings 9405.40 or 9405.50, HTSUS, and are utilitarian articles of a kind used in the home in the performance of Hanukkah, a religious holiday. Menorahs are listed in subheading 9817.95.01, HTSUS, as an example of a article included within the subheading.

**HOLDING:**

Pursuant to GRI's 1 and 6, the traditional menorahs are classified in subheading 9405.50.40, HTSUS. The plastic electrical menorah is classified in subheading 9405.40.84, HTSUS. Both the traditional and electrical menorahs are eligible for duty-free treatment in accordance with subheading 9817.95.01, HTSUS. The column one, general rate of duty for all the menorahs is Free.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided for at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY J82947, NY I84339, NY E80531, NY D86109, NY D86108, and NY D85910 are revoked.

*Sincerely,*

CRAIG T. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

cc: NIS Sandra Carlson, and NIS Michael Chen, NCS D

NY J82947

April 7, 2003

CLA-2-95:RR:NC:SP:225 J82947

CATEGORY: Classification

TARIFF NO.: 9505.90.6000

Ms. AMANDA WILSON  
DILLARD'S, INC.  
1600 CANTRELL ROAD  
LITTLE ROCK, AR 72201

RE: The tariff classification of a menorah from India.

DEAR Ms. WILSON:

In your letter dated April 1, 2003, you requested a tariff classification ruling.

The submitted sample is a 100% nickel-plated brass menorah identified as Style #327T1356NA. The menorah consists of an ornate arch attached to a rectangular-shaped base and measures approximately 7 inches in height x 3 inches in width x 5 inches in length. The base has three levels. On the top level, inside the arch, is a flame that measures approximately 2-1/2 inches in height x 1/2 inch in width x 1-1/4 inch in length. To the right of the flame is a holder for the insertion of a candle. The middle level is not decorated. The bottom level has 8 holders for the insertion of candles. All nine holders are to be used with candles in the celebration of Chanukah. The candles are not included. The menorah is an accepted symbol of the Chanukah holiday and is classifiable as a festive article in Chapter 95 of the Harmonized Tariff Schedule.

Your sample is being returned as requested.

The applicable subheading for the menorah, Style #327T1356NA, will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other." The rate of duty will be free.

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 Alice Wong at 646-733-3026.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

NY I84339

July 22, 2002

CLA-2-95:RR:NC:SP:225 I84339

CATEGORY: Classification

TARIFF NO.: 9505.90.6000

MS. JENNY DAVENPORT  
WAL\*MART STORES, INC.  
MAIL STOP #0410 - L - 32  
601 N. WALTON  
BENTONVILLE, AR 72716-0410

RE: The tariff classification of a Wood – Celebrate Menorah from China.

DEAR MS. DAVENPORT:

In your letter dated July 10, 2002, you requested a tariff classification ruling.

The submitted sample, Style #C13621B, Wood – Celebrate Menorah, is a rectangular shaped wooden menorah that measures approximately 3 inches in height x 1-1/2 inches in width x 7-1/2 inches in length with metallic circular depressions for insertion of candles (not included). The menorah is decorated with the word “Celebrate” in assorted colored letters across the front.

The applicable subheading for Style #C13621B, Wood – Celebrate Menorah, will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other. The rate of duty will be free.

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 Alice Wong at 646-733-3026.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*



PD E80531

April 27, 1999

CLA-2-95:D13 E80531

CATEGORY: Classification

TARIFF NO.: 9505.90.6000

MR. PAUL A. BARKAN  
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN  
245 PARK AVENUE  
33RD FLOOR  
NEW YORK, NEW YORK 10167-3397

RE: The tariff classification of an Menorahmade in China.

DEAR MR. BARKAN:

In a letter dated April 5, 1999 you requested a tariff classification ruling on behalf of your client, Rite Lite Ltd. A sample was provided.

The item is an Menorahitem #EM-GLOW/M, a nine-branched candelabrum made of plastic. ( A Menorah is a candle holder with places for eight candles plus a place for the , the single candle which lights the other eight candles.) This particular Menorah has eight plastic simulated candles and a Shamish. The Menorah is designed to operate on AC current and there are selecting levers in the back of the Menorah for lighting individual candles on their respective night. Each candle also illuminates in a different color. The Menorah is used in celebration of the eight nights of Hanukkah.

The applicable subheading for the Menorah, item #EM-GLOW/M will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for Festive, carnival or other entertainment articles, other: other. The rate of duty is free.

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.

*Sincerely,*

JEFFREY R. WALGREEN  
*Port Director  
Portland, Maine*

NY D86109

January 14, 1999

CLA-2-95:RR:NC:SP:225 D86109

CATEGORY: Classification

TARIFF NO.: 9505.90.6000

MR. ASHER RUBINSTEIN  
GRUNFELD, DESIDERIO, LEBOWITZ & SILBERMAN LLP  
245 PARK AVENUE 33RD FLOOR  
NEW YORK, N.Y. 10167-3397

RE: The tariff classification of an Electric menorah

DEAR MR. RUBINSTEIN:

In your letter dated December 15, 1998 you requested a tariff classification ruling on behalf of your client Aviv Judaica Imports, Ltd.

The item is an electric menorah made of plastic. (A menorah is a candle holder with places for eight candles plus a ninth place for the “shamash”, the single candle which lights the other eight candles.) There are eight light bulbs, plus a ninth light bulb which represents the single candle, the “shamash”.

The menorah represents an historical event in Judaism. After the liberation of the temple, it was discovered there was only enough oil for one night. However, the oil lasted for eight nights. The celebration of this event is called Hanukkah (also spelled Chanukah). The menorah has come to be considered a symbol of Hanukkah.

Electric “candle holders” are generally classified in another Chapter. However, as a result of *Midwest of Cannon Falls* consideration must be given to the possibility of classification within Heading 9505.

In the Informed Compliance Handbook *Classification of Festive Articles*, various Holidays and motifs were listed which were identified as accepted holidays and their appropriate symbols. Hanukkah was not on that list. However, in that same handbook it was stated that the listed holidays and symbols were not definitive, and additional holidays and motifs would be added. Since the posting of the Informed Compliance Handbook on the world wide web in November of 1997, consideration has been given to Hanukkah as an additional accepted holiday.

In *Midwest* the Court considered as Festive Articles certain items which were advertised and sold to consumers before the particular holiday with which they were associated. It was determined that the items must be used in celebration of and for entertainment on a joyous holiday. It would appear that Hanukkah meets the court’s standard of a joyous holiday as it is a celebration of a miraculous event.

The menorah today can come in many forms, as long as it contains the necessary eight plus one configuration. In the instant case, the menorah is designed so there is no need to use candles. It can be placed in a window without fear that drapes would catch fire. It can be left “burning” all night. Nonetheless, it will be used to decorate the home and is a necessary part of the celebration of Hanukkah.

By classifying this menorah within Heading 9505, Hanukkah is recognized as an accepted holiday and the menorah is recognized as an accepted symbol of that holiday.

The applicable subheading for the electric menorah will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for Festive, carnival or other entertainment articles,..... Other: Other. The rate of duty will be free.

The sample is being retained by the National Import Specialist for training purposes.

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 Alice J. Wong at (212) 466-5538.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

NY D86108

January 14, 1999

CLA-2-95:RR:NC:SP:225 D86108

CATEGORY: Classification

TARIFF NO.: 9505.90.6000

MR. ASHER RUBINSTEIN

GRUNFELD, DESIDERIO, LEBOWITZ &amp; SILBERMAN LLP

245 PARK AVENUE 33RD FLOOR

NEW YORK, N.Y. 10167-3397

RE: The tariff classification of a brass menorah from India

DEAR MR. RUBINSTEIN:

In your letter dated December 15, 1998 you requested a tariff classification ruling on behalf of your client Aviv Judaica Imports, Ltd.

The item is a brass menorah (a candle holder with places for eight candles plus a ninth place for the "shamash", the single candle which lights the other eight candles).

The menorah represents an historical event in Judaism. After the liberation of the temple, it was discovered there was only enough oil for one night. However, the oil lasted for eight nights. The celebration of this event is called Hanukkah (also spelled Chanukah). The menorah has come to be considered a symbol of Hanukkah.

Candle holders are generally classified in another Chapter. However, as a result of *Midwest of Cannon Falls* consideration must be given to the possibility of classification within Heading 9505.

In the Informed Compliance Handbook *Classification of Festive Articles*, various Holidays and motifs were listed which were identified as accepted holidays and their appropriate symbols. Hanukkah was not on that list. However, in that same handbook it was stated that the listed holidays and symbols were not definitive, and additional holidays and motifs would be added. Since the posting of the Informed Compliance Handbook on the world wide web in November of 1997, consideration has been given to Hanukkah as an additional accepted holiday.

In *Midwest* the Court considered as Festive Articles certain items which were advertised and sold to consumers before the particular holiday with which they were associated. It was determined that the items must be used in celebration of and for entertainment on a joyous holiday. It would appear that Hanukkah meets the court's standard of a joyous holiday as it is a celebration of a miraculous event.

The menorah today can come in many forms, as long as it contains the necessary eight plus one configuration. In the instant case, this small brass menorah is quite traditional. It will be used to decorate the home and is a necessary part of the celebration of Hanukkah.

By classifying this menorah within Heading 9505, Hanukkah is recognized as an accepted holiday and the menorah is recognized as an accepted symbol of that holiday.

The applicable subheading for the electric menorah will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for Festive, carnival or other entertainment articles,..... Other: Other. The rate of duty will be free.

The sample is being retained by the National Import Specialist for training purposes.

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 Alice J. Wong at (212) 466-5538.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

NY D85910

January 5, 1999

CLA-2-95:RR:NC:SP:225 D85910

CATEGORY: Classification

TARIFF NO.: 9505.90.6000

MR. ASHER RUBINSTEIN  
GRUNFELD, DESIDERIO, LEBOWITZ & SILBERMAN LLP  
245 PARK AVENUE 33RD FLOOR  
NEW YORK, N.Y. 10167-3397

RE: The tariff classification of two ceramic menorahs

DEAR MR. RUBINSTEIN:

In your letter dated December 11, 1998 you requested a tariff classification ruling on behalf of your client Aviv Judaica Imports, Ltd.

The first item is a ceramic menorah (a candle holder with places for eight candles plus a ninth candle holder for the “shamash”, the single candle which lights the other eight candles) which contains a scene. The scene is a room with a table and figures from “Winnie the Pooh”.

The second item is a ceramic menorah (see definition above) in the shape of a train.

The menorah represents an historical event in Judaism. After the liberation of the temple, it was discovered there was only enough oil for one night. However, the oil lasted for eight nights. The celebration of this event is called Hanukkah (also spelled Chanukah). The menorah has come to be considered a symbol of Hanukkah.

Candle holders are generally classified in Chapter 94. However, as a result of *Midwest of Cannon Falls* consideration must be given to the possibility of classification within Heading 9505.

In the Informed Compliance Handbook *Classification of Festive Articles*, various Holidays and motifs were listed which were identified as accepted holidays and their appropriate symbols. Hanukkah was not on that list. However, in that same handbook it was stated that the listed holidays and symbols were not definitive, and additional holidays and motifs would be added. Since the posting of the Informed Compliance Handbook on the world wide web in November of 1997, consideration has been given to Hanukkah as an additional accepted holiday.

In *Midwest* the Court considered as Festive Articles certain items which were advertised and sold to consumers before the particular holiday with which they were associated. It was determined that the items must be used in celebration of and for entertainment on a joyous holiday. It would appear that Hanukkah meets the court's standard of a joyous holiday as it is a celebration of a miraculous event.

The menorah today can come in many forms, as long as it contains the necessary eight plus one configuration. In the instant case, these menorahs are designed to appeal to children. Nonetheless, they will be used to decorate the home and are a necessary part of the celebration of Hanukkah.

By classifying these menorahs within Heading 9505, Hanukkah is recognized as an accepted holiday and the menorah is recognized as an accepted symbol of that holiday.

The applicable subheading for the two menorahs will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for Festive, carnival or other entertainment articles,.....: Other: Other. The rate of duty will be free.

The samples are returned under separate cover as requested.

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 Alice J. Wong at (212) 466-5538.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

**19 CFR PART 177****REVOCAION OF ONE RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF A CERTAIN INFINITY ROSE  
FLOWER BOX**

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

**ACTION:** Notice of revocation of one ruling letter and revocation of treatment relating to the tariff classification of a certain Infinity Rose Flower Box.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the tariff classification of a certain Infinity Rose Flower Box under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 55, No.6, on February 17, 2021. No comments were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 6, 2021.

**FOR FURTHER INFORMATION CONTACT:** Tatiana Salnik Matherne, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0351.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

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



information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 55, No.6, on February 17, 2021, proposing to revoke one ruling letter pertaining to the tariff classification of a certain Infinity Rose Flower Box. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter ("NY") N307028, dated November 21, 2019, CBP classified the Infinity Rose Flower Box at issue in heading 0604, HTSUS, specifically in subheading 0604.90.6000, HTSUSA, which provides for "Foliage, branches and other parts of plants, without flowers or flower buds, and grasses, mosses and lichens, being goods of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared: Other: Other: Other." CBP has reviewed NY N307028 and has determined the ruling letter to be in error. It is now CBP's position that the Infinity Rose Flower Box at issue is properly classified, in heading 0603, HTSUS, specifically in subheading 0603.90.0000, HTSUSA, which provides for "Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N307028 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H313526, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

FOR

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H313526

March 23, 2021

OT:RR:CTF:FTM H313526 TSM

CATEGORY: Classification

TARIFF NO.: 0603.90.0000

Ms. SUSANNE GELLERT

GERMAN AMERICAN CHAMBER OF COMMERCE, INC.

80 PINE STREET, 24TH FLOOR

NEW YORK, NY 10005

Re: Revocation of NY N307028; Tariff classification of Infinity Rose Flower Box from Germany

DEAR Ms. GELLERT:

This is in reference to New York Ruling Letter (“NY”) N307028, issued to Soeller, Radtke und Krieg GbR (Schonungen, Germany), on November 21, 2019. In that ruling, U.S. Customs and Border Protection (“CBP”) classified a product described as Infinity Rose Flower Box under subheading 0604.90.6000, Harmonized Tariff Schedule of the United States (Annotated) (“HTSUSA”), which provides for “Foliage, branches and other parts of plants, without flowers or flower buds, and grasses, mosses and lichens, being goods of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared: Other: Other: Other.” We have reviewed NY N307028 and found it to be incorrect. For the reasons set forth below, we are revoking NY N307028.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(1)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 55, No. 6, on February 17, 2021, proposing to revoke NY N307028, and revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

**FACTS:**

In NY N307028, the Infinity Rose Flower Box at issue was described as follows:

The subject merchandise is the Infinity Rose Flower Box. The product is a cardboard box that contains four roses affixed to sponge, a greeting card, an instruction card, an envelope, and a single ribbon. You have stated that the bouquet consists of fresh roses treated with a mixture glycerine and coloring agents that serve to extend the durability of the product.

**ISSUE:**

What is the tariff classification of the Infinity Rose Flower Box?

**LAW AND ANALYSIS:**

Classification under the HTSUS is determined 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. In the event that the

goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The 2020 HTSUS provisions under consideration are as follows:

0603 Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared

\* \* \*

0604 Foliage, branches and other parts of plants, without flowers or flower buds, and grasses, mosses and lichens, being goods of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared

\* \* \*

Note 2 to Chapter 6 provides as follows:

Any reference in heading 0603 or 0604 to goods of any kind shall be construed as including a reference to bouquets, floral baskets, wreaths and similar articles made wholly or partly of goods of that kind, account not being taken of accessories of other materials. However, these headings do not apply to collages or similar decorative plaques of heading 9701.

\* \* \*

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

The EN to heading 06.03 states as follows:

The heading covers not only cut flowers and buds as such, but also bouquets, wreaths, floral baskets and similar articles (e.g., posies and buttonholes) incorporating flowers or flower buds. Provided that such bouquets, etc., have the essential character of florists’ wares, they remain in the heading even if they contain accessories of other materials (ribbons, paper trimmings, etc.).

Cut branches of trees, shrubs or bushes, if bearing flowers or flower buds (e.g., magnolia and certain types of roses), are treated as cut flowers or flower buds of this heading.

The heading **excludes** flowers, petals and buds of a kind used primarily in perfumery, in pharmacy, or for insecticidal, fungicidal or similar purposes, provided that, in the condition in which they are presented, they are not suitable for bouquets or for ornamental use (**heading 12.11**). The heading also **excludes** collages and similar decorative plaques of **heading 97.01**.

\* \* \*

The EN to heading 06.04 states as follows:

This heading covers not only foliage, branches, etc., as such, but also bouquets, wreaths, floral baskets and similar articles incorporating foliage or parts of trees, shrubs, bushes or other plants, or incorporating grasses, mosses or lichens. Provided that such bouquets, etc., have the

essential character of florists' wares, they remain in the heading even if they contain accessories of other materials (ribbons, wire frames, etc.).

Goods of this heading may bear decorative fruits, but if they incorporate flowers or flower buds they are **excluded (heading 06.03)**.

The heading covers natural Christmas trees, provided that they are clearly unfit for replanting (e.g., root sawn off, root killed by immersion in boiling water).

The heading also **excludes** plants and parts of plants (including grasses, mosses and lichens) of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes (**heading 12.11**) or for plaiting (**heading 14.01**), provided that, in the condition in which they are presented, they are not suitable for bouquets or for ornamental purposes. The heading also **excludes** collages and similar decorative plaques of **heading 97.01**.

\* \* \*

In NY N307028, CBP classified the Infinity Rose Flower Box at issue under heading 0604, HTSUS, which provides for "Foliage, branches and other parts of plants, without flowers or flower buds, and grasses, mosses and lichens, being goods of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared." Upon review, we note that while heading 0604, HTSUS, provides in relevant part for "... other parts of plants, without flowers or flower buds...", the Infinity Flower Box contains roses. Accordingly, we find that it is not classified under heading 0604, HTSUS.

Heading 0603, HTSUS, provides for "Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared." Upon review, we find that the roses in the Infinity Rose Flower Box at issue are classified in this heading. Specifically, because they are treated with a mixture of glycerin and coloring agents by means of a conservation process, and are no longer "fresh roses" for tariff classification purposes, the roses at issue are classified under subheading 0603.90.0000, HTSUSA, which provides for "Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared: Other."

The Infinity Rose Flower Box at issue is a composite good consisting of a cardboard box that contains four roses affixed to sponge, a greeting card, an instruction card, an envelope, and a single ribbon. The tariff classification of composite goods is governed by GRI 3, which provides, in pertinent part:

When, by application of rule 2(b), or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

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

Pursuant to GRI 3(b), composite goods are classified by the component which gives them their essential character. See *Better Home Plastics Corp. v.*

*United States*, 916 F. Supp. 1265 (CIT 1996), *aff'd*, 119 F.3d 969 (Fed. Cir. 1997). Of the several components that form the product at issue, only the roses are indispensable with relation to the product's use as they are the sole reason one would purchase the product. Therefore, the component that imparts the essential character of the Infinity Rose Flower Box is the roses.

Based on the foregoing, we conclude that the Infinity Rose Flower Box at issue is classified in heading 0603, HTSUS, and subheading 0603.90.0000, HTSUS, which provides for "Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared: Other."

**HOLDING:**

By application of GRIs 1 and 3(b), the Infinity Rose Flower Box at issue is classified under heading 0603, HTSUS, and specifically under subheading 0603.90.0000, HTSUSA, which provides for "Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared: Other." The 2020 column one, general rate of duty is 4% *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY N307028, dated November 21, 2019, 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,*

*For*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

**COPYRIGHT, TRADEMARK, AND TRADE NAME  
RECORDATIONS  
(No. 01 2021)**

**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 January 2021. A total of 159 recordation applications were approved, consisting of 4 copyrights and 155 trademarks. The last notice was published in the Customs Bulletin Vol. 55 No. 9

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](mailto:iprrquestions@cbp.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Christopher Hawkins, 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 — JANUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 02-00336	01/06/2021	05/10/2026	YANKEES and Design	NEW YORK YANKEES PARTNERSHIP	No
TMK 02-00619	01/29/2021	01/25/2031	CARAVELLE	CITIZEN WATCH COMPANY OF AMERICA, INC.	No
TMK 02-01016	01/22/2021	02/01/2031	PREPARATION H	PF CONSUMER HEALTHCARE 1 LLC	No
TMK 07-00616	01/13/2021	01/10/2031	F (STYLIZED)	Fairechild Semiconductor Corporation	No
TMK 08-00026	01/29/2021	01/24/2031	GC FUJI II	TRADEMARK HOLDINGS OF ILLINOIS LLC	No
TMK 08-00253	01/21/2021	06/07/2030	BROADCOM & DESIGN	AVAGO TECHNOLOGIES INTERNATIONAL	No
TMK 09-00597	01/14/2021	02/06/2031	ROWE	Rowe Fine Furniture, Inc.	No
TMK 10-01083	01/13/2021	01/10/2031	BROADCOM	AVAGO TECHNOLOGIES INTERNATIONAL SALES PTE.	No
TMK 11-00424	01/13/2021	10/06/2020	Polo Player Silhouette Design	PRL USA Holdings, Inc.	No
TMK 11-00457	01/13/2021	02/16/2023	FLYING V	Gibson Guitar Corp.	No
TMK 11-00789	01/21/2021	06/15/2031	CONFIGURATION OF A TOOLBOX	QUALITY CRAFT INDUSTRIES INC.	No
TMK 11-00869	01/21/2021	01/18/2031	PARNATE	GLAXOSMITHKLINE LLC	No
TMK 11-00943	01/14/2021	01/26/2031	FORMULA 409 & Design	The Clorox Company	No
TMK 11-01281	01/13/2021	07/05/2030	GRAVY TRAIN	BIG HEART PET, INC.	No



## CBP IPR RECORDATION — JANUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 11-01327	01/29/2021	07/16/2026	S & W	DEL MONTE FOODS, INC.	No
TMK 12-00702	01/14/2021	12/07/2030	LEAPING DEER DESIGN	Deere & Company CORPORATION	No
TMK 12-00830	01/08/2021	05/12/2031	Swirl Design Trademark	D.B.C. Corporation	No
TMK 12-01431	01/19/2021	02/16/2031	HUNTER & DESIGN	Hunter Boot Limited	No
TMK 13-01049	01/22/2021	01/17/2031	RBC	Roller Bearing Company of America, Inc.	No
TMK 13-01050	01/22/2021	01/17/2031	RBC BEARINGS	Roller Bearing Company of America, Inc.	No
TMK 15-00025	01/13/2021	01/19/2031	CTR	Magpul Industries Corp	No
TMK 15-00235	01/15/2021	01/09/2031	CBR	HONDA GHKEN KOGYO KABUSHIKI KAISHA	No
TMK 15-00533	01/06/2021	02/23/2030	MICROTECH & DESIGN	Microtech Knives, Inc.	No
TMK 15-00810	01/12/2021	04/30/2027	TOPTEE	HOQ, SARDER R INDIVIDUAL	No
TMK 15-00910	01/08/2021	10/06/2030	HUF H & Design	HUF Worldwide LLC	No
TMK 16-00931	01/21/2021	03/21/2031	LOCK LACES & DESIGN	POSITIVE DISTRIBUTION LLC	No
TMK 16-01309	01/19/2021	01/19/2031	KONTROLFREEK	KontrolFreeK, LLC	No
TMK 17-00578	01/13/2021	09/08/2030	BRANSTON	The J.M. Smucker Company	No
TMK 17-01123	01/22/2021	11/01/2030	M Wave Design	MACMILLAN PUBLISHERS	No
TMK 18-00280	01/08/2021	12/21/2030	ABEO	ABEO FOOTWEAR, INC.	No
TMK 18-00455	01/22/2021	01/19/2031	SWAROVSKI	Swarovski Aktiengesellschaft	No

## CBP IPR RECORDATION — JANUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trm	Owner Name	GM Restricted
TMK 18-00526	01/22/2021	01/19/2031	SWAN DESIGN	Swarovski Aktiengesellschaft	No
TMK 18-00925	01/14/2021	03/05/2021	JIF (STYLIZED)	THE J. M. SMUCKER COMPANY CORPORATION	No
TMK 18-00949	01/14/2021	03/14/2030	DICKINSON'S	THE J. M. SMUCKER COMPANY CORPORATION	No
TMK 18-00958	01/14/2021	08/26/2029	NUTRISH	BIG HEART PET, INC.	No
TMK 19-00022	01/21/2021	01/19/2031	FPS FREEK	KontrolFreek, LLC	No
TMK 19-00536	01/21/2021	10/13/2030	Three Drops Design	Medela Holding AG	No
TMK 21-00001	01/04/2021	04/02/2028	SOCOM ALPHA	Microtech Knives, Inc.	No
TMK 21-00002	01/04/2021	10/04/2027	A.D.O.	Microtech Knives, Inc.	No
TMK 21-00003	01/04/2021	05/14/2027	FALLOUT	Microtech Knives, Inc.	No
TMK 21-00004	01/04/2021	05/14/2027	ANTHONY L MARFIONE	Microtech Knives, Inc.	No
TMK 21-00005	01/04/2021	12/06/2026	BLOOD AND IRON	Microtech Knives, Inc.	No
TMK 21-00006	01/06/2021	01/09/2029	HALO	Microtech Knives, Inc.	No
TMK 21-00007	01/06/2021	12/30/2025	DETROIT TIGERS & Design	DETROIT TIGERS, INC.	No
TMK 21-00008	01/06/2021	03/08/2031	Big Easy Ranch & Design	BB Oak Creek Ranch, LLC	No
TMK 21-00009	01/06/2021	03/01/2031	CHEERYCHEWS BRITAIN GUMMY	Naseeb International Corporation	No
TMK 21-00010	01/06/2021	07/30/2029	SHELL SHOCK	Microtech Knives, Inc.	No

## CBP IPR RECORDATION — JANUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 21-00011	01/06/2021	08/04/2030	ELEMENT	Marfione, Anthony INDIVIDUAL	No
TMK 21-00012	01/06/2021	03/22/2031	OZRAY (Stylized)	ANUM LLC	No
TMK 21-00013	01/06/2021	05/25/2030	APOCALYPTIC	Microtech Knives, Inc.	No
TMK 21-00014	01/06/2021	10/26/2026	INTERCEPTOR	Microtech Knives, Inc.	No
TMK 21-00015	01/06/2021	08/17/2026	ARBITER	Microtech Knives, Inc.	No
TMK 21-00016	01/06/2021	07/11/2026	SARIKIZ	VINTAGE FOODS IP HOLDINGS INC.	No
TMK 21-00017	01/06/2021	03/01/2031	BIDI	BIDI Vapor, LLC	No
TMK 21-00018	01/06/2021	11/19/2023	AMPHIBIAN	Marfione, Anthony INDIVIDUAL	No
TMK 21-00019	01/06/2021	04/17/2026	SCARAB (Stylized)	MARFONE, ANTHONY INDIVIDUAL	No
TMK 21-00020	01/06/2021	02/24/2031	BIDI (Stylized)	BIDI Vapor, LLC	No
TMK 21-00021	01/06/2021	05/25/2030	25 YEARS OF INNOVATION MICRO-TECH 2019 & DESIGN	Microtech Knives, Inc.	No
TMK 21-00022	01/06/2021	04/30/2028	S M & DESIGN	Microtech Knives, Inc.	No
TMK 21-00023	01/06/2021	08/23/2027	ANTHONY L MARFONE (STYLIZED)	Microtech Knives, Inc.	No
TMK 21-00024	01/06/2021	09/13/2025	WINTERSTICK	BIGELOW MOUNTAIN PARTNERS LLC	No
TMK 21-00025	01/06/2021	10/22/2024	TORONTO (STYLIZED)	Rogers Blue Jays Baseball Partnership	No
TMK 21-00026	01/06/2021	07/30/2023	TORONTO BLUE JAYS & DESIGN	Rogers Blue Jays Baseball Partnership	No
TMK 21-00027	01/06/2021	03/29/2031	POP HIT & DESIGN	Pop Vapor Co., LLC	No

## CBP IPR RECORDATION — JANUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 21-00028	01/06/2021	10/28/2025	UL Cookie & Design	UL LLC	No
TMK 21-00029	01/06/2021	07/19/2021	ECOLOGO	UL LLC	No
TMK 21-00030	01/06/2021	12/30/2023	New Sail Logo	Nautica Apparel, Inc.	No
TMK 21-00031	01/07/2021	08/15/2027	ARIZONA DIAMONDBACKS	AZPB Limited Partnership	No
TMK 21-00032	01/07/2021	06/05/2023	A & DESIGN	ATLANTA NATIONAL LEAGUE BASE-BALL CLUB, LLC	No
TMK 21-00033	01/07/2021	07/19/2031	BLACKLIGHT	6569048 Canada Inc.	No
TMK 21-00034	01/07/2021	05/10/2025	UL GREENGUARD & DESIGN	UL LLC	No
TMK 21-00035	01/07/2021	10/19/2031	BALTIMORE (Stylized)	Baltimore Orioles Limited Partnership	No
TMK 21-00036	01/07/2021	07/10/2022	CUMMINS	Cummins, Inc.	No
TMK 21-00037	01/07/2021	12/04/2022	CUMMINS	CUMMINS INC.	No
TMK 21-00038	01/07/2021	12/01/2023	CUMMINS (STYLIZED)	CUMMINS INC.	No
TMK 21-00039	01/07/2021	05/21/2022	C CUMMINS (STYLIZED)	Cummins Inc.	No
TMK 21-00040	01/07/2021	12/04/2022	C CUMMINS (STYLIZED)	CUMMINS INC.	No
TMK 21-00041	01/07/2021	04/30/2022	CUMMINS C (STYLIZED)	Cummins, Inc.	No
TMK 21-00042	01/07/2021	06/19/2023	CUMMINS (STYLIZED)	Cummins Inc.	No
TMK 21-00043	01/07/2021	03/23/2029	FLEETGUARD	Fleetguard, Inc.	No

## CBP IPR RECORDATION — JANUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 21-00044	01/07/2021	02/25/2026	NEWAGE STAMFORD	CUMMINS GENERATOR TECHNOLOGIES LIMITED	No
TMK 21-00045	01/07/2021	12/25/2029	STAMFORD	CUMMINS GENERATOR TECHNOLOGIES LIMITED	No
TMK 21-00046	01/07/2021	08/08/2027	HOLSET & DESIGN	Cummins Ltd.	No
TMK 21-00047	01/07/2021	11/29/2029	HOLSET	CUMMINS TURBO TECHNOLOGIES LIMITED	No
TMK 21-00048	01/07/2021	09/28/2021	HOLSET VGT	CUMMINS TURBO TECHNOLOGIES LIMITED	No
TMK 21-00049	01/08/2021	11/27/2023	O'S & Design	Baltimore Orioles Limited Partnership	No
TMK 21-00050	01/08/2021	06/25/2028	C & Design	Chicago Cubs Baseball Club, LLC	No
TMK 21-00051	01/08/2021	04/20/2025	PLANTLIFE	HUF Worldwide, LLC	No
TMK 21-00052	01/08/2021	07/02/2029	BIONTECH	BIONTECH SE	No
TMK 21-00053	01/08/2021	08/21/2023	STABLELOAD	Tork Lift Central Welding of Kent, Inc.	No
TMK 21-00054	01/08/2021	07/10/2022	CUMMINS	Cummins Inc.	No
TMK 21-00055	01/08/2021	12/24/2023	CUMMINS	Cummins Inc.	No
TMK 21-00056	01/08/2021	08/21/2029	JOOVV	Joovy, Inc.	No
TMK 21-00057	01/08/2021	01/20/2031	JOOVV & DESIGN	Joovy, Inc.	No

## CBP IPR RECORDATION — JANUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trn	Owner Name	GM Restricted
TMK 21-00058	01/11/2021	11/11/2030	Configuration of a Portable Wrist Water Bottle	Julie Austin	No
TMK 21-00059	01/11/2021	02/06/2029	NOBLE BODY & DESIGN	John J. Smalanskas	No
TMK 21-00060	01/13/2021	01/08/2030	DIRAC DELTA	Microtech Knives, Inc.	No
TMK 21-00061	01/13/2021	02/26/2030	JUULPODS	JUUL Labs, Inc.	No
TMK 21-00062	01/13/2021	03/01/2031	SOLAR LITE	Jay's Import & Export LLC	No
TMK 21-00063	01/13/2021	03/29/2031	POP HIT & DESIGN	Pop Vapor Co., LLC	No
TMK 21-00064	01/13/2021	03/29/2031	POP HIT	Pop Vapor Co., LLC	No
TMK 21-00065	01/13/2021	11/26/2024	R RUGER & EAGLE DESIGN	Sturm, Ruger & Company, Inc.	No
TMK 21-00066	01/14/2021	02/17/2031	MEDI TEDDY & Design	I.V. Comfort Solutions LLC	No
TMK 21-00067	01/14/2021	12/25/2027	RUGER	Sturm, Ruger and Co., Inc.	No
TMK 21-00068	01/14/2021	08/11/2030	R & Eagle Design	Sturm, Ruger and Co., Inc.	No
TMK 21-00069	01/14/2021	11/03/2030	R & Eagle Design	Sturm, Ruger and Co., Inc.	No
TMK 21-00070	01/14/2021	12/07/2030	R & eagle Design	Sturm, Ruger and Company, Inc.	No
TMK 21-00071	01/14/2021	10/08/2024	R Ruger & Eagle Design	Sturm, Ruger & Company, Inc.	No
TMK 21-00072	01/14/2021	12/30/2024	R RUGER & eagle DESIGN	Sturm, Ruger & Company, Inc.	No
TMK 21-00073	01/14/2021	03/16/2025	R RUGER & eagle DESIGN	Sturm, Ruger & Company, Inc.	No
TMK 21-00074	01/14/2021	03/15/2026	R & eagle DESIGN	Sturm, Ruger & Company, Inc.	No

## CBP IPR RECORDATION — JANUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 21-00075	01/15/2021	03/08/2031	SHOTPAK	Rogers, Paul INDIVIDUAL	No
TMK 21-00076	01/19/2021	02/03/2031	GALAXRAY	Galaxray LLC	No
TMK 21-00077	01/21/2021	01/19/2031	REVLAR	Relyco Sales, Inc	No
TMK 21-00078	01/21/2021	03/29/2031	ABACUS.AI	RealityEngines.AI, Inc	No
TMK 21-00079	01/21/2021	03/01/2031	RAISED ON BLACKTOP	American Pavement Specialists, LLC.	No
TMK 21-00080	01/21/2021	03/22/2031	GADERIAN	Gaderian LLC	No
TMK 21-00081	01/21/2021	06/30/2025	M & DESIGN	MONCLER S.P.A.	No
TMK 21-00082	01/21/2021	03/10/2030	MONCLER GENIUS	MONCLER S.P.A.	No
TMK 21-00083	01/22/2021	04/05/2031	NATASHA LA. TRESA HARRIS-JOHNSON	Harris-Johnson, Natasha L.	No
TMK 21-00084	01/22/2021	01/22/2030	MONCLER GENIUS & DESIGN	MONCLER S.P.A.	No
TMK 21-00085	01/22/2021	06/24/2025	KIRKLAND SIGNATURE	Costco Wholesale Corporation	No
TMK 21-00086	01/22/2021	09/16/2030	EEVEE	Nintendo of America Inc.	No
TMK 21-00087	01/22/2021	01/12/2031	OCC	Optical Cable Corporation	No
TMK 21-00088	01/22/2021	10/28/2030	GAME BOY	Nintendo of America Inc.	No
TMK 21-00089	01/26/2021	08/12/2030	GAMECUBE	Nintendo of America Inc.	No
TMK 21-00090	01/27/2021	10/04/2027	ANAX	Microtech Knives, Inc.	No
TMK 21-00091	01/28/2021	12/15/2030	HAHN	Dr. Hahn GmbH & Co.	No

## CBP IPR RECORDATION — JANUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 21-00092	01/28/2021	03/15/2031	RIKHI RAM	RIKHI RAM LLC	No
TMK 21-00093	01/28/2021	03/08/2031	RR (Stylized)	RIKHI RAM LLC	No
TMK 21-00094	01/28/2021	02/07/2028	DRYDENE	DRYDENE PERFORMANCE PROD-UCTS, INC.	No
TMK 21-00095	01/28/2021	06/30/2030	DRF	DRYDENE PERFORMANCE PROD-UCTS, INC.	No
TMK 21-00096	01/28/2021	06/07/2027	Green Cast & Design	Madreperla S.p.A.	No
TMK 21-00097	01/28/2021	01/25/2022	KIDOOZIE	EPOCH EVERLASTING PLAY LLC	No
TMK 21-00098	01/28/2021	03/16/2024	EARLYEARS	EPOCH EVERLASTING PLAY LLC	No
TMK 21-00099	01/28/2021	10/28/2030	MARIOKART	Nintendo of America Inc.	No
TMK 21-00100	01/28/2021	04/14/2030	NES	Nintendo of America Inc.	No
TMK 21-00101	01/28/2021	04/14/2030	NINTENDO ENTERTAINMENT SYS-TEM	Nintendo of America Inc.	No
TMK 21-00102	01/28/2021	09/16/2030	PICROSS	Nintendo of America Inc.	No
TMK 21-00103	01/28/2021	10/28/2030	POKÉ PLUSH	Nintendo of America Inc.	No
TMK 21-00104	01/28/2021	03/31/2024	CLEAN SAFETY	CLEAN SAFETY, INC.	No
TMK 21-00105	01/28/2021	10/28/2030	RING-CON	Nintendo of America Inc.	No
TMK 21-00106	01/29/2021	09/23/2030	SUPER MARIO	Nintendo of America Inc.	No



## CBP IPR RECORDATION — JANUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 21-00107	01/29/2021	05/18/2030	GAMECUBE G Logo Design	Nintendo of America Inc.	No
TMK 21-00108	01/29/2021	03/02/2029	Blue (color mark) on Aerial Platform	Terex South Dakota, Inc.	No
TMK 21-00109	01/29/2021	04/21/2030	Blue (color mark) on EXTENDED Scissor Lift	Terex South Dakota, Inc.	No
TMK 21-00110	01/29/2021	04/28/2030	Blue (color mark) retracted Scissor Lift	Terex South Dakota, Inc.	No
TMK 21-00111	01/29/2021	04/28/2030	Blue (color mark) on extended Rough Terrain Scissor Lift	Terex South Dakota, Inc.	No
TMK 21-00112	01/29/2021	12/08/2030	RETEVMO	Eli Lilly and Company	No
TMK 21-00113	01/29/2021	05/04/2030	VYNDAQEL	Wyeth LLC	No
TMK 21-00114	01/29/2021	05/14/2022	XELJANZ	Pfizer Inc.	No
TMK 21-00115	01/29/2021	12/08/2030	LYUMJEV	Eli Lilly and Company	No
TMK 21-00116	01/29/2021	10/07/2025	POLYTEEL	Coast Cutlery Co.	No
TMK 21-00117	01/29/2021	12/29/2030	SMOKE AND IRON FIREFIGHTERS MC	Dietz, James L DBA Smoke and Iron Firefighters MC	No
TMK 94-00621	01/14/2021	12/19/2029	SMUCKERS & DESIGN	J. M. SMUCKER COMPANY,	No
COP 21-00005	02/05/2021	02/02/2041	CLUBHOUSE GAMES	Nintendo of America Inc.	No
COP 21-00006	02/05/2021	02/04/2041	SUPER MARIO 3D ALL-STARS (US Commercial Packaging)	Nintendo of America Inc.	No

**CBP IPR RECORDATION — JANUARY 2021**

<b>Recordation No.</b>	<b>Effective Date</b>	<b>Expiration Date</b>	<b>Name of Cop/Tmk/Tm</b>	<b>Owner Name</b>	<b>GM Restricted</b>
COP 21-00007	02/05/2021	02/04/2041	LUIGI KART FIGURE	Nintendo of America Inc.	No
COP 21-00008	02/05/2021	02/04/2041	MARIO KART FIGURE	Nintendo of America Inc.	No
COP 21-00009	02/12/2021	02/08/2041	Crinklz Design and Characters.	Thrust Vector Ltd.	No
COP 21-00010	02/12/2021	02/09/2041	Mumbai Diamond tile design	Artistic Tile, Inc.	No
COP 21-00011	02/19/2021	02/18/2041	PAPER MARIO	NINTENDO OF AMERICA, INC.	No
COP 21-00012	02/25/2021	02/24/2041	ARP Automotive Racing Products 2020 Catalog and Tech Guide.	Automotive Racing Products, Inc.	No

## APPLICATION TO USE AUTOMATED COMMERCIAL ENVIRONMENT (ACE)

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

**ACTION:** 60-Day notice and request for comments; Extension of an existing collection of information.

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

**DATES:** Comments are encouraged and must be submitted (no later than May 18, 2021) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0105 in the subject line and the agency name. Please use the following method to submit comments:

*Email.* Submit comments to: *CBP\_PRA@cbp.dhs.gov*.

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

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

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

utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Application to Use Automated Commercial Environment (ACE).

**OMB Number:** 1651-0105.

**Current Actions:** Extension.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Abstract:** The Automated Commercial Environment (ACE) is a trade data processing system that is replacing the Automated Commercial System (ACS), the current import system for U.S. Customs and Border Protection (CBP) operations. ACE is authorized by Executive Order 13659 which mandates implementation of a Single Window through which businesses will transmit data required by participating agencies for the importation or exportation of cargo. See 79 FR 10655 (February 25, 2014). ACE supports government agencies and the trade community with border-related missions with respect to moving goods across the border efficiently and securely. Once ACE is fully implemented, all related CBP trade functions and the trade community will be supported from a single common user interface.

To establish an ACE Portal account, participants submit information such as their name, their employer identification number (EIN) or social security number (SSN), and if applicable, a statement certifying their capability to connect to the internet. This information is submitted through the ACE Secure Data Portal which is accessible at: <http://www.cbp.gov/trade/automated>

*Please Note:* a CBP-assigned number may be provided in lieu of your SSN. If you have an EIN, that number will automatically be used and no CBP number will be assigned. A CBP-assigned number is for CBP use only.

There is a standalone capability for electronically filing protests in ACE. This capability is available for participants who have not established ACE Portal Accounts for other trade activities, but desire to file protests electronically. A protest is a procedure whereby a private party may administratively challenge a CBP decision regarding imported merchandise and certain other CBP decisions. Trade members can establish a protest filer account in ACE through a separate application and the submission of specific data elements includes, but is not limited to, their name; their employer identification number (EIN) or social security number (SSN); and contact information. *See* 81 FR 57928 (August 24, 2016).

*Type of Information Collection:* Application to ACE (Import)

**Estimated Number of Respondents:** 21,100  
**Estimated Number of Annual Responses per Respondent:** 1  
**Estimated Number of Total Annual Responses:** 21,100  
**Estimated Time per Response:** .33 hours  
**Estimated Total Annual Burden Hours:** 6,963

*Type of Information Collection:* Application to ACE (Export)

**Estimated Number of Respondents:** 9,000  
**Estimated Number of Annual Responses per Respondent:** 1  
**Estimated Number of Total Annual Responses:** 9,000  
**Estimated Time per Response:** .066 hours  
**Estimated Total Annual Burden Hours:** 594

*Type of Information Collection:* Application to ACE (Protest)

**Estimated Number of Respondents:** 3,750  
**Estimated Number of Annual Responses per Respondent:** 1  
**Estimated Number of Total Annual Responses:** 3,750  
**Estimated Time per Response:** .066 hours  
**Estimated Total Annual Burden Hours:** 248

Dated: March 15, 2021.

ROBERT F. ALTNEU,  
*Director,*  
*Regulations and Disclosure Law Division,*  
*U.S. Customs and Border Protection.*

## 19 CFR Chapter I

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

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

**ACTION:** Notification of continuation of temporary travel restrictions.

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

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

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On March 24, 2020, DHS published notice of its decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel,” as further defined in that document.<sup>1</sup> The document described the developing circumstances regarding the COVID-19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID-19 within the United States and globally, DHS had determined that the risk of continued transmission and spread of the virus associated with COVID-19 between the United States and Mexico posed a “specific threat to human life or national interests.” DHS later

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

published a series of notifications continuing such limitations on travel until 11:59 p.m. EDT on March 21, 2021.<sup>2</sup>

DHS continues to monitor and respond to the COVID–19 pandemic. As of the week of March 7, 2021, there have been over 116.1 million confirmed cases globally, with over 2.5 million confirmed deaths.<sup>3</sup> There have been over 29.2 million confirmed and probable cases within the United States,<sup>4</sup> over 881,000 confirmed cases in Canada,<sup>5</sup> and over 2.1 million confirmed cases in Mexico.<sup>6</sup>

### Notice of Action

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

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

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<sup>2</sup> See 86 FR 10816 (Feb. 23, 2021); 86 FR 4967 (Jan. 19, 2021); 85 FR 83433 (Dec. 22, 2020); 85 FR 74604 (Nov. 23, 2020); 85 FR 67275 (Oct. 22, 2020); 85 FR 59669 (Sept. 23, 2020); 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020). DHS also published parallel notifications of its decisions to continue temporarily limiting the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to “essential travel.” See 86 FR 10815 (Feb. 23, 2021); 86 FR 4969 (Jan. 19, 2021); 85 FR 83432 (Dec. 22, 2020); 85 FR 74603 (Nov. 23, 2020); 85 FR 67276 (Oct. 22, 2020); 85 FR 59670 (Sept. 23, 2020); 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020).

<sup>3</sup> WHO, Coronavirus disease 2019 (COVID–19) Weekly Epidemiological Update (Mar. 7, 2021), available at <https://www.who.int/publications/m/item/weekly-epidemiological-update---10-march-2021>.

<sup>4</sup> CDC, COVID Data Tracker (accessed Mar. 15, 2021), [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days).

<sup>5</sup> WHO, COVID–19 Weekly Epidemiological Update (Mar. 7, 2021).

<sup>6</sup> *Id.*

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

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

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

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



- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

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

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

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

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

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

[Published in the Federal Register, March 19, 2021 (85 FR 14813)]

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

## 19 CFR CHAPTER I

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

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

**ACTION:** Notification of continuation of temporary travel restrictions.

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

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

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

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### Notice of Action

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

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<sup>2</sup> See 86 FR 10815 (Feb. 23, 2021); 86 FR 4969 (Jan. 19, 2021); 85 FR 83432 (Dec. 22, 2020); 85 FR 74603 (Nov. 23, 2020); 85 FR 67276 (Oct. 22, 2020); 85 FR 59670 (Sept. 23, 2020); 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020). DHS also published parallel notifications of its decisions to continue temporarily limiting the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel.” See 86 FR 10816 (Feb. 23, 2021); 86 FR 4969 (Jan. 19, 2021); 85 FR 83433 (Dec. 22, 2020); 85 FR 74604 (Nov. 23, 2020); 85 FR 67275 (Oct. 22, 2020); 85 FR 59669 (Sept. 23, 2020); 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020).

<sup>3</sup> WHO, Coronavirus disease 2019 (COVID–19) Weekly Epidemiological Update (Mar. 7, 2021), available at <https://www.who.int/publications/m/item/weekly-epidemiological-update---10-march-2021>.

<sup>4</sup> CDC, COVID Data Tracker (accessed Mar. 15, 2021), [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days).

<sup>5</sup> WHO, COVID–19 Weekly Epidemiological Update (Mar. 7, 2021).

<sup>6</sup> *Id.*

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

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

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

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

- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

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

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

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

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

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

[Published in the Federal Register, March 19, 2021 (85 FR 14812)]

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



# U.S. Court of International Trade

Slip Op. 21–31

CELİK HALAT VE TEL SANAYİ A.S., Plaintiff, v. UNITED STATES, Defendant, and INSTEEL WIRE PRODUCTS COMPANY et al., Defendant-Intervenors.

Before: Claire R. Kelly, Judge  
Court No. 20–03843

[Dismissing Plaintiff’s complaint challenging Commerce’s preliminary determination in the antidumping duty investigation into prestressed concrete steel wire strand from the Republic of Turkey.]

Dated: March 24, 2021

*Irene H. Chen*, Chen Law Group LLC of Rockville, MD for plaintiff.

*Tara K. Hogan*, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice of Washington, DC, for defendant. Also on the briefs were *Jeanne E. Davidson*, Director, and *Jeffrey Bossert Clark* and *Bryan M. Boynton*, Acting Assistant Attorneys General. Of counsels on the briefs were *Reza Karamloo* and *Jesus Saenz*, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce of Washington, DC.

*Paul C. Rosenthal*, *Kathleen W. Cannon*, *R. Alan Luberdia*, *Brooke M. Ringel*, and *Joshua R. Morey*, Kelley Drye & Warren LLP of Washington, DC, for defendant-intervenors Insteel Wire Products Company, Sumiden Wire Products Corporation, and Wire Mesh Corp.

## OPINION

### Kelly, Judge:

Before the court is Defendant’s motion to dismiss Plaintiff Celik Halat ve Tel Sanayi A.S.’s (“Celik”) complaint requesting relief from the U.S. Department of Commerce’s (“Commerce”) preliminary determination in its antidumping duty (“ADD”) investigation into prestressed concrete steel wire strand (“PC Strand”) from the Republic of Turkey (“Turkey”). *See* Mot. to Dismiss Compl. for Lack of Juris., Dec. 10, 2020, ECF No. 19 (“Mot. to Dismiss”); *see also* Compl., Nov. 19, 2020, ECF No. 2 (“Compl.”). Defendant argues that the Court lacks jurisdiction over Celik’s complaint, filed under 28 U.S.C. § 1581(i) (2018),<sup>1</sup> because the remedy available under § 1581(c) is not manifestly inadequate. *See* Mot. to Dismiss at 7–10. Defendant further argues that the preliminary results have been subsumed into the

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<sup>1</sup> Further citations to Title 28 of the U.S. Code are to the 2018 edition.

final determination; and, that Celik has challenged that final determination in a new complaint. *See* Reply Sup. Def.'s Mot. to Dismiss Compl.'s for Lack of Juris. at 2–4, Feb. 4, 2021, ECF No. 22 (“Def.’s Reply Br.”).<sup>2</sup> Celik argues that jurisdiction under 28 U.S.C. § 1581(i) is proper because the remedy under § 1581(c) is manifestly inadequate. *See* Pl. [Celik’s] Opp. to Def.’s Mot. to Dismiss Compl.’s at 15–21, Jan. 14, 2021, ECF No. 21 (“Pl.’s Br.”). For the following reasons, Defendant’s motion is granted, and the case is dismissed.

### BACKGROUND

On May 6, 2020, Commerce initiated its ADD investigation of PC Strand from Turkey. *See* Compl. at ¶ 3; *see also* [PC Strand] from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, [Turkey], Ukraine, and the United Arab Emirates, 85 Fed. Reg. 28,605, 28,610 (Dep’t Commerce May 13, 2020) (initiation of less-than-fair value investigations). On June 18, 2020, Commerce selected Celik for individual examination. *See* Compl. at ¶ 4. The next day, Commerce issued to Celik an antidumping questionnaire and set forth a deadline of July 17, 2020 for Celik’s Section A response; August 10, 2020 for its Sections B and Section C responses; and August 13, 2020 for its Section D response. *See id.* at ¶ 5. Celik’s questionnaire responses were to be uploaded electronically to Commerce’s ACCESS website by 5:00 pm on the specified deadline for each section. *See id.*

Plaintiff states that although it timely filed its Section A and Section D questionnaire responses, it untimely filed portions of its Section B and Section C responses because some of its exhibits contained “no searchable text”, the ACCESS platform did not accept those documents, and ACCESS sent Celik an error message notifying it of the error. *See id.* at ¶¶ 7–17. Namely, with respect to its Section B response, Plaintiff untimely submitted a supplementary “Domestic Sales Table” at 5:21 pm, and with respect to its Section C response, Plaintiff untimely submitted Exhibits C8–11—which comprised a part of Celik’s response—at 5:06 pm. *See id.* at ¶ 8.<sup>3</sup> Since Plaintiff did not meet the 5:00 pm deadline on August 10, 2020, Commerce refused

<sup>2</sup> In Defendant’s motion to dismiss the complaint, it initially argued that Celik’s claim was not ripe. *See* Mot. to Dismiss at 10–11. Defendant initially relied on the ripeness doctrine, because, although Commerce had issued a final determination in the matter by the time Defendant filed its motion to dismiss, the International Trade Commission (“ITC”) had yet to make a finding of threat to the domestic injury and thereby issue an ADD order. *See id.* at 11.

<sup>3</sup> Celik states that it commenced efforts to upload the Sections B and C questionnaire responses at 4:10 pm. *See* Compl. at ¶ 9. At 4:12 pm, Celik received an email from ACCESS rejecting one (1) exhibit in the confidential version of the Section B questionnaire response



to accept Plaintiff's Sections B and C questionnaire responses. *See id.* at ¶¶ 18–22. On September 30, 2020, Commerce issued a preliminary determination in which it found that Plaintiff did not cooperate with the investigation to the best of its ability, and thus Commerce used facts otherwise available with an adverse inference (“adverse facts available” or “AFA”)<sup>4</sup> to preliminarily assign Plaintiff a dumping margin of 53.65 percent. *See [PC Strand] from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, [Turkey], Ukraine, and the United Arab Emirates*, 85 Fed. Reg. 61,722 (Dep’t Commerce Sept. 30, 2020) (prelim. affirmative determinations of sales at less than fair value & prelim. affirmative critical circumstances determinations, in part) (“*Prelim. Results*”) and accompanying Decisions Memo. for the [*Prelim. Results*] at 7–9, A-489–842, (Sept. 23, 2020), *available at* <https://enforcement.trade.gov/frn/summary/turkey/2020–21546–2.pdf> (last visited Mar. 18, 2021); *see also* Section 776 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1677e (2018).<sup>5</sup>

On November 19, 2020, Celik filed a complaint alleging that Commerce improperly rejected its late questionnaire responses. *See* Compl. at ¶¶ 43–44. On the same day, Celik filed a motion for a temporary restraining order (“TRO”) and preliminary injunction, *see* Pl.’s Mot. for [TRO] & Prelim. Injunction, Nov. 19, 2020, ECF No. 5, which the court subsequently denied. *See Celik Halat ve Tel Sanayi A.S., v. United States*, 44 CIT \_\_, \_\_, Slip Op. No. 20–175 at 17 (2020).<sup>6</sup> On December 10, 2020, Defendant filed a motion to dismiss Celik’s complaint, arguing that the Court lacked subject matter jurisdiction over Celik’s complaint filed under 28 U.S.C. § 1581(i). *See* Mot. to Dismiss at 7–11. Celik filed a response in which it argued that

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because it contained “no searchable text.” *See id.* at ¶ 10. Celik received the same error message—“no searchable text”—when it attempted to upload the confidential version of the exhibits to the Section C questionnaire. *See id.* at ¶ 12. Celik states it fixed the problem with the documents, resubmitted all of the rejected documents, and eventually successfully uploaded them, with the last upload occurring at 5:21 pm. *See id.* at ¶¶ 12–15.

<sup>4</sup> Parties and Commerce sometimes use the shorthand “AFA” or “adverse facts available” to refer to Commerce’s reliance on facts otherwise available with an adverse inference to reach a final determination. AFA, however, encompasses a two-part inquiry established by statute. *See* 19 U.S.C. § 1677e(a)–(b). It first requires Commerce to identify information missing from the record, and second, to explain how a party failed to cooperate to the best of its ability as to warrant the use of an adverse inference when “selecting among the facts otherwise available.” *Id.*

<sup>5</sup> 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.

<sup>6</sup> This court denied Celik’s motion for a preliminary injunction and TRO because it found that Celik was unlikely to succeed on the merits and had failed to show that it would be imminently and irreparably harmed if the court did not grant the motion. *See Celik Halat ve Tel Sanayi A.S., v. United States*, 44 CIT \_\_, \_\_, Slip Op. No. 20175 at 7–17 (2020).

it carried its burden of establishing that jurisdiction was proper under 28 U.S.C. § 1581(i), because jurisdiction under § 1581(c) is manifestly inadequate. *See* Pl.’s Br. at 15–21. Commerce subsequently published its final determination on January 29, 2021, *see [PC Strand] From Argentina, Colombia, Egypt, Netherlands, Saudi Arabia, Taiwan, Turkey, and the United Arab Emirates*, 86 Fed. Reg. 7,564, 7,564–65 (Dep’t Commerce Jan. 29, 2021) (final determ.), and issued an ADD order on February 1, 2021. *See [PC Strand] From Argentina, Colombia, Egypt, Netherlands, Saudi Arabia, Taiwan, Turkey, and the United Arab Emirates*, 86 Fed. Reg. 7,703 (Dep’t Commerce Feb. 1, 2021) ([ADD] orders). On the same day the ADD order was issued, Celik filed a complaint challenging the determination. *See* Compl., Feb. 1, 2021, ECF No. 2 (from Dkt. Ct. No. 21–00045). In its reply, Defendant argues that Celik’s complaint regarding the preliminary determination has now been subsumed into the final determination. *See* Def.’s Reply Br. at 2–4.

## DISCUSSION

Defendant moves to dismiss Celik’s complaint for lack of subject matter jurisdiction under 28 U.S.C. § 1581(i), because jurisdiction under § 1581(c) is available. *See* Mot. to Dismiss at 7–11. Moreover, Defendant argues that the final determination, now the subject of a complaint that Celik has filed, subsumes the preliminary determination. *See* Def.’s Reply Br. at 2–4. Celik contends that review under § 1581(c) is manifestly inadequate because, if required to file its complaint under this subsection, Celik will have suffered “irreversible and irreparable harm” by the conclusion of the regular judicial appeal proceedings. *See* Pl.’s Br. at 9, 15–17.

Under 28 U.S.C. § 1581(i), the Court has jurisdiction to hear “any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for . . . (2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue.” 28 U.S.C. § 1581(i)(2). However, § 1581(i) “shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable[] by the Court of International Trade under [19 U.S.C. § 1516a(a)]. . . .” 28 U.S.C. § 1581(i). The legislative history of § 1581(i) demonstrates Congress intended “that any determination specified in [19 U.S.C. § 1516a] or any preliminary administrative action which, in the course of the proceeding, will be, directly or by implication, incorporated in or superceded by any such determination, is reviewable exclusively as provided in [19 U.S.C. § 1516a].” H.R.Rep. No.

96–1235, at 48 (1980), *reprinted in* 1980 U.S.C.C.A.N. 3729, 3759–60. Thus, the Court’s § 1581(i) jurisdiction is available only if the party asserting jurisdiction can show the Court’s § 1581(a)–(h) jurisdiction is unavailable, or the remedies afforded by those provisions would be manifestly inadequate. *See Miller & Co. v. United States*, 824 F.2d 961, 963 (Fed. Cir. 1987) (“*Miller & Co.*”) (“Section 1581(i) jurisdiction may not be invoked when jurisdiction under another subsection of § 1581 is or could have been available, unless the remedy provided under that other subsection would be manifestly inadequate.” (citations omitted)).

Manifest inadequacy exists when, although there is jurisdiction under 28 U.S.C. § 1581(a)–(h), filing suit under one of those subsections would be an “exercise of futility,” meaning that it is “incapable of producing any result.” *See Hartford Fire Ins. Co. v. United States*, 544 F.3d at 1289 (Fed. Cir. 2008) (finding no futility where the plaintiff failed to make a required challenge directly to Customs after a Customs demand for payment, based on unsubstantiated claims that it would be futile to do so because Customs had a financial interest in the challenge and thus was allegedly biased). That judicial review may be delayed by requiring a party to wait for Commerce’s final determination is not enough to render judicial review under § 1581(c) manifestly inadequate. *See Gov’t of People’s Republic of China v. United States*, 31 CIT 451, 461, 483 F. Supp. 2d 1274, 1282 (2007) (“*Gov’t of China v. United States*”). Neither the burden of participating in the administrative proceeding nor the business uncertainty caused by such a proceeding is sufficient to constitute manifest inadequacy. *See, e.g., id.*, 31 CIT at 461–62, 483 F. Supp. 2d at 1283 (citing *FTC v. Standard Oil Co. of California*, 449 U.S. 232, 244 (1980) (“*FTC*”)); *Abitibi–Consolidated Inc. v. United States*, 30 CIT 714, 717–18, 437 F. Supp. 2d 1352, 1356–57 (2006) (“*Abitibi–Consolidated Inc.*”). Financial hardship resulting from review under § 1581(a)–(h) does not constitute manifest inadequacy. *See International Custom Products, Inc. v. United States*, 467 F.3d 1324, 1327–28 (Fed. Cir. 2006) (“*International Custom Products*”) (finding no manifest inadequacy where plaintiff was under threat of imminent bankruptcy as a result of review under § 1581(a)); *see also Miller & Co.*, 824 F.2d at 964; *American Air Parcel Forwarding Co., Ltd. v. United States*, 718 F.2d 1546, 1550–51 (Fed. Cir. 1983).

Here, recourse under 28 U.S.C. § 1581(c) is not manifestly inadequate because judicial review pursuant to subsection (c) provides the remedy Celik seeks—namely, a remand order directing Commerce to reconsider, further explain its refusal, or accept Celik’s submissions.

Celik concedes that “the law provides for section (c) review[.]” See Compl. at 2; Pl.’s Br. at 9. Nonetheless, Celik argues that jurisdiction under 28 U.S.C. § 1581(c) is manifestly inadequate because Celik would purportedly lose its entire U.S. sales market by the end of the appeal, which it argues could take one to two years. See Compl. ¶ 31; Pl.’s Br. at 8–9, 15–18, 21–22.<sup>7</sup> Celik’s allegation that it would lose its entire U.S. sales market as a result of participation in administrative and judicial proceedings does not render the remedy available under 28 U.S.C. § 1581(c) manifestly inadequate. See *International Custom Products*, 467 F.3d at 1327–28. In *International Custom Products*, the Court of Appeals found that even though the company was at risk of losing its entire business as a result of participation in judicial proceedings under 28 U.S.C. § 1581(c), that financial harm alone was insufficient to meet the standard for manifest inadequacy. See *id.* at 1327–28. Participating in administrative reviews, and subsequent judicial proceedings is a cost of importing products into the United States. See *Gov’t of China v. United States*, 31 CIT at 461, 483 F. Supp. 2d at 1282 (“the cost associated with defending oneself in a trade remedy proceeding is not the type of burden with which this Court concerns itself”).

Celik invokes a number of cases in which the court found that it had jurisdiction under 28 U.S.C. § 1581(i), and claims that these cases support its argument for jurisdiction under the same provision. Each one of these cases is distinct from the present case. Two cases Celik cites concern a situation where the plaintiff alleges that Commerce unlawfully initiated an administrative review. See, e.g., *JIA Farn Mfg. Co. v. Secretary of United States DOC*, 17 CIT 187, 188–89, 817 F. Supp. 969, 971–72 (1993); *Asociacion Colombiano de Exportadores de Flores v. United States*, 13 CIT 584, 585–88, 717 F. Supp. 847, 849–51 (1989). Here, Celik does not allege that the administrative review itself is illegal, but rather that Commerce’s rejection of the late portions of the questionnaire responses was an abuse of discretion.

Celik further argues that the question of jurisdiction cannot be separated from the merits of the case, invoking *Sahaviriya Steel Indus. Pub. Co. v. United States*, 601 F. Supp. 2d 1355, 1366 (“*Sahaviriya Steel*”), because Celik claims that Commerce’s rejection of its

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<sup>7</sup> Celik further argues that the combined rate assigned in the ADD and CVD proceedings is so high that it cannot afford to pay it, nor can it afford to post a bond to satisfy its obligations. See Pl.’s Br. at 18–19. Although Celik is the producer and exporter of PC Strand, it states that its U.S. importer told Celik that it could not pay the ADD or CVD cash deposits for imports of Celik’s PC Strand. See Compl. at Ex.H, ¶ 12, Nov. 19, 2020, ECF No. 2–1 (“Compl. Exs.”). Thus, Celik states that it looked into the possibility of Celik itself acting as the U.S. importer in order to try to save its U.S. business. See *id.* at Ex. H, ¶ 13. Celik, however, states that it “cannot possibly fund deposits at that level.” See *id.*

questionnaire responses and subsequent application of an AFA rate “is a pretextual method for excluding it from the U.S. market for at least 2 years, while regular judicial appeal is concluded.” See Pl.’s Br. at 20.<sup>8</sup> Celik thus argues that this court should deny the pending motion to dismiss and allow Celik the opportunity for an evidentiary submission and hearing. See *id.* at 16, 19.<sup>9</sup> Celik asserts, but offers no support for its position, that Commerce is acting in bad faith and that the rejection of its questionnaire responses was pretextual. More importantly, Celik is incorrect that the merits of the case cannot be separated from the jurisdictional question. Even if Commerce may have abused its discretion, a matter on which the court offers no view at this time, such an issue is the exact type of issue that the court considers in an action under 28 U.S.C. § 1581(c). See, e.g., *CP Kelco (Shandong) Biological Co. v. United States*, 40 CIT \_\_, \_\_, 145 F. Supp. 3d 1366, 1373 (2016).<sup>10</sup>

Finally, Commerce’s preliminary determination has now merged into the final determination, and thus is unreviewable by this Court. In *FTC*, the Supreme Court ruled that where a preliminary determination of an agency constitutes a mere step towards a final decision, and will later merge into the final decision, it is unreviewable at the preliminary juncture. See *FTC*, 449 U.S. at 246 (1980). At the time that the United States filed its motion to dismiss, Commerce had already completed and issued final results, and was preparing to

<sup>8</sup> Celik filed a complaint under 28 U.S.C. § 1581(c) less than three months after it filed its complaint under 28 U.S.C. § 1581(i). See Def.’s Reply Br. at 4. Although Celik claims that waiting for a decision under 28 U.S.C. § 1581(c) may take up to one to two years, see Pl.’s Br. at 8–9, it is unclear how long a proceeding under either § 1581(c) or § 1581(i) would take, and whether there would be a material difference in the time it took to resolve one versus the other, given that the complaints were filed so close together.

<sup>9</sup> Celik does not allege that it will be forced into bankruptcy or otherwise lose its business completely as a result of the review. Rather, Celik alleges that it will be harmed by having to pay cash deposits pending resolution of its appeal. See Pl.’s Br. at 11, 17–19. Specifically, Celik complains that payment of cash deposits will cause it to lose its U.S. market, which accounts for nearly half of its export business. See Pl.’s Mot. for [TRO] & Prelim. Injunction at 13, Nov. 19, 2020, ECF No. 5; Compl. Exs. at Ex. H, ¶ 4. Moreover, Celik acknowledges the court’s opinion that Celik did not present any evidence to support its contention that it would suffer immediate and irreparable harm. See *Celik Halat ve Tel Sanayi A.S., v. United States*, 44 CIT \_\_, \_\_, Slip Op. No. 20–175 at 14 (2020). Notwithstanding its argument that it should not be dismissed without a hearing, Celik did not move for a hearing and it declines to offer any new or additional support at this juncture. See Pl.’s Br. at 19. Moreover, even if Celik’s representations were correct and it could demonstrate that it would lose its U.S. market, such a showing would be insufficient to demonstrate manifest inadequacy. See *International Custom Products*, 467 F.3d at 1327–28.

<sup>10</sup> Thus, Celik’s reliance on *Sahaviriya Steel* is inapposite. In *Sahaviriya Steel*, the plaintiff premised its complaint on its argument that Commerce acted ultra vires when it initiated a changed-circumstances review of plaintiff’s sales of a hot-rolled carbon steel from Thailand. See *id.* at 1357, 1361. Plaintiff sought to enjoin Commerce from continuing the review. See *id.* at 1357. Plaintiff in that case argued that where Commerce acted “patently ultra vires” the merits of the case becomes intertwined with the dispute. See *id.* at 1563. Here, Celik claims that Commerce abused its discretion, not that Commerce acted ultra vires.

publish those results in the Federal Register. *See* Mot. to Dismiss. at 2–3, 6. Since then, Commerce has indeed published the final results, an ADD order has been issued, and Celik has already filed a complaint challenging the results of the ADD proceedings. *See* Def.’s Reply Br. at 2–4. Thus, the preliminary determination has now merged into the final determination, and only the final determination is reviewable by this Court under *FTC*.<sup>11</sup>

### CONCLUSION

For the foregoing reasons, it is

**ORDERED** that Defendant’s motion to dismiss for lack of jurisdiction is granted; and it is further

**ORDERED** that the case is dismissed. Judgment will enter accordingly.

Dated: March 24, 2021

New York, New York

*/s/ Claire R. Kelly*

CLAIRE R. KELLY, JUDGE

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<sup>11</sup> As discussed, Commerce initially argued that Celik’s claim is not ripe. *See* Mot. To Dismiss at 10–11; *see supra* n.2. “Ripeness is a justiciability doctrine designed ‘to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.’” *Nat’l Park Hospitality Ass’n v. U.S. Dep’t of Interior*, 538 U.S. 803, 807–08 (2003). By the time Defendant filed its reply to plaintiff’s response to its motion to dismiss, Commerce had issued an ADD order based on determinations of Commerce and the ITC, and thus Defendant argued that the proceedings were complete, and any preliminary determinations had been subsumed into the final results and order. *See* Def.’s Reply Br. at 2–4. Commerce has issued final results and Celik is now entitled to challenge those results under 28 U.S.C. § 1581(c).



## Slip Op. 21–32

CELIK HALAT VE TEL SANAYI A.S., Plaintiff, v. UNITED STATES, Defendant, and INSTEEL WIRE PRODUCTS COMPANY et al., Defendant-Intervenors.

Before: Claire R. Kelly, Judge  
Court No. 20–03848

[Dismissing Plaintiff’s complaint challenging Commerce’s preliminary determination in the countervailing duty investigation into prestressed concrete steel wire strand from the Republic of Turkey.]

Dated: March 24, 2021

*Irene H. Chen*, Chen Law Group LLC of Rockville, MD for plaintiff.

*Tara K. Hogan*, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice of Washington, DC, for defendant. Also on the briefs were *Jeanne E. Davidson*, Director, and *Jeffrey Bossert Clark* and *Bryan M. Boynton*, Acting Assistant Attorneys General. Of counsels on the briefs were *Reza Karamloo* and *Jesus Saenz*, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce of Washington, DC.

*Paul C. Rosenthal*, *Kathleen W. Cannon*, *R. Alan Luberda*, *Brooke M. Ringel*, and *Joshua R. Morey*, Kelley Drye & Warren LLP of Washington, DC, for defendant-intervenors Insteel Wire Products Company, Sumiden Wire Products Corporation, and Wire Mesh Corp.

## OPINION

### Kelly, Judge:

Before the court is Defendant’s motion to dismiss Plaintiff Celik Halat ve Tel Sanayi A.S.’s (“Celik”) complaint requesting relief from the U.S. Department of Commerce’s (“Commerce”) preliminary determination in its countervailing duty (“CVD”) investigation into prestressed concrete steel wire strand (“PC Strand”) from the Republic of Turkey (“Turkey”). *See* Mot. to Dismiss Compl. for Lack of Juris., Dec. 10, 2020, ECF No. 22 (“Mot. to Dismiss”); *see also* Compl., Nov. 19, 2020, ECF No. 2 (“Compl.”). Defendant argues that the Court lacks jurisdiction over Celik’s complaint, filed under 28 U.S.C. § 1581(i) (2018),<sup>1</sup> because the remedy under § 1581(c) is not manifestly inadequate. *See* Mot. to Dismiss at 7–10. Defendant further argues that the preliminary results have been subsumed into the final determination; and, that Celik has challenged that final determination in a new complaint and therefore the Court lacks jurisdiction to entertain this action. *See* Reply Sup. Def.’s Mot. to Dismiss Compl.’s for Lack of

<sup>1</sup> Further citations to Title 28 of the U.S. Code are to the 2018 edition.

Juris. at 2–4, Feb. 4, 2021, ECF No. 25 (“Def.’s Reply Br.”).<sup>2</sup> Celik argues that jurisdiction under 28 U.S.C. § 1581(i) is proper because the remedy under § 1581(c) is manifestly inadequate. *See* Pl. [Celik’s] Opp. to Def.’s Mot. to Dismiss Compl.’s at 13–17, Jan. 14, 2021, ECF No. 24 (“Pl.’s Br.”). For the following reasons, Defendant’s motion is granted, and the case is dismissed.

## BACKGROUND

On May 6, 2020, the U.S. Department of Commerce (“Commerce”) initiated its countervailing duty (“CVD”) investigation of PC Strand from Turkey. *See* Compl. at ¶ 2; *see also* [PC Strand] from [Turkey], 85 Fed. Reg. 28,610, 28,612 (Dep’t Commerce May 13, 2020) (initiation of [CVD] investigation). On June 25, 2020, Commerce selected Celik for individual examination. *See* Compl. at ¶ 3. That same day, Commerce issued a revised initial CVD questionnaire to the Turkish government and set a deadline of August 10, 2020 at 5:00 pm Eastern Daylight Time for filing the final business proprietary information (“BPI”) and the public CVD questionnaire responses. *See id.* at ¶¶ 3, 9.

Plaintiff states that on or about August 4, 2020, due in part to a “medical situation” of counsel, it filed a request for a one-week extension of the August 7, 2020 deadline to file its response to Section III of Commerce’s CVD questionnaire, which Commerce declined. *See id.* at ¶ 7. On August 7, 2020, Plaintiff timely filed its BPI response. *See id.* at ¶ 8. However, on August 10, 2020, purportedly due to counsel’s medical situation, Plaintiff overlooked the two-hour time difference between Mountain Daylight Time and Eastern Daylight Time when timing its submission of the final BPI and public versions of the questionnaire, and thus submitted its response at 4:27 pm MDT (6:27 pm EDT) instead of 4:27 pm EDT. *See id.* at ¶¶ 10, 12.<sup>3</sup> For its preliminary determination, Commerce applied facts otherwise available with an adverse inference (“AFA”) after finding that Celik significantly impeded its investigation, and assigned a CVD subsidy and

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<sup>2</sup> In Defendant’s motion to dismiss the complaint, it initially argued that Celik’s claim was not ripe. *See* Mot. to Dismiss at 10–11. Defendant initially relied on the ripeness doctrine, because, although Commerce had issued a final determination in the matter by the time Defendant filed its motion to dismiss, the International Trade Commission (“ITC”) had yet to make a finding of threat to the domestic injury and thereby issue a CVD order. *See id.* at 11.

<sup>3</sup> It appears that there is a typographical error in Plaintiff’s complaint, and the court presumes that Plaintiff intended to state that, in filing its submission at 4:27 pm MDT, it overlooked the time difference between MDT and EDT. What Plaintiff actually states is that “the filing was actually submitted at 6:27 PM MDT, not 4:27PM EDT[.]” Compl. at ¶ 12. If this were true, then Plaintiff’s filing was not submitted until 8:27 pm EDT.



cash deposit rate of 135.06 percent.<sup>4</sup> See [*PC Strand*] from [*Turkey*], 85 Fed. Reg. 59,287, 59,288 (Dep't Commerce Sept. 21, 2020) (prelim. affirmative [CVD] determination, prelim. affirmative critical circumstances determination, in part) ("*Prelim. Results*") and accompanying Decision Memo. for the [*Prelim. Results*] at 9, C-489–843, (Sept. 14, 2020) available at <https://enforcement.trade.gov/frn/summary/turkey/2020-20692-1.pdf> (last visited Mar. 18, 2021). Moreover, Commerce determined that critical circumstances existed with respect to Celik's imports of subject merchandise, and, pursuant to section 703 and 733 of the Tariff Act of 1930, as amended 19 U.S.C. §§ 1671b(e)(2) and 1673b(e)(2) (2018),<sup>5</sup> Commerce retroactively suspended liquidation of Celik's entries. See *Prelim Results*, 85 Fed. Reg. at 59,288.

On November 19, 2020, Plaintiff Celik initiated this action pursuant to 28 U.S.C. § 1581(i) by concurrently filing a summons and complaint. See Summons, Nov. 19, 2020, ECF No. 1; Compl. Shortly thereafter, Celik moved for a temporary restraining order ("TRO") and a preliminary injunction to enjoin Commerce from continuing to reject its untimely submitted questionnaire responses in the ongoing CVD investigation of certain PC Strand from Turkey. See generally Pl.'s Mot.; see also *Prelim. Results*. Plaintiff also filed a motion to consolidate this case with Celik Halat ve Tel Sanayi A.S. v. United States, Ct. No. 20–03843, an action challenging Commerce's decision to reject Celik's untimely questionnaire responses in the ongoing ADD investigation of PC Strand from Turkey. See Pl.'s Mot. to Consolidate Cases, Nov. 19, 2020, ECF No. 6; see also Compl., Nov. 19, 2020, ECF No. 2 (from Dkt. No. 20–03843). The court denied the motion for a TRO and preliminary injunction, see generally *Celik Halat ve Tel Sanayi A.S., v. United States*, 44 CIT \_\_, \_\_, Slip Op. No. 20–176 (2020),<sup>6</sup> and stayed the motion to consolidate pending resolution of the motion to dismiss. See Scheduling Order, Nov. 20, 2020, ECF No. 11.

<sup>4</sup> Parties and Commerce sometimes use the shorthand "AFA" or "adverse facts available" to refer to Commerce's reliance on facts otherwise available with an adverse inference to reach a final determination. AFA, however, encompasses a two-part inquiry established by statute. See 19 U.S.C. § 1677e(a)–(b). It first requires Commerce to identify information missing from the record, and second, to explain how a party failed to cooperate to the best of its ability as to warrant the use of an adverse inference when "selecting among the facts otherwise available." *Id.*

<sup>5</sup> 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.

<sup>6</sup> This court denied Celik's motion for a preliminary injunction and TRO because it found that Celik was unlikely to succeed on the merits and had failed to show that it would be imminently and irreparably harmed if the court did not grant the motion. See *Celik Halat ve Tel Sanayi A.S., v. United States*, 44 CIT \_\_, \_\_, Slip Op. No. 20176 at 7–16 (2020).

On December 10, 2020, Defendant filed a motion to dismiss Celik's complaint, arguing that the Court lacked subject matter jurisdiction over Celik's complaint filed under 28 U.S.C. § 1581(i). *See* Mot. to Dismiss at 7–11. Celik filed a response in which it argued that it carried its burden of establishing that jurisdiction was proper under 28 U.S.C. § 1581(i), because jurisdiction under § 1581(c) is manifestly inadequate. *See* Pl.'s Br. at 13–17. Commerce subsequently published its final determination on January 29, 2021, *see [PC Strand] From Argentina, Colombia, Egypt, Netherlands, Saudi Arabia, Taiwan, Turkey, and the United Arab Emirates*, 86 Fed. Reg. 7,564, 7,564–65 (Dep't Commerce Jan. 29, 2021) (final determ.), and issued a CVD order on February 3, 2021. *See [PC Strand] From Argentina, Colombia, Egypt, Netherlands, Saudi Arabia, Taiwan, Turkey, and the United Arab Emirates*, 86 Fed. Reg. 7,990 (Dep't Commerce Feb. 3, 2021) ([CVD] order). On the same day the CVD order was issued, Celik filed a complaint challenging the determination. *See* Compl., Feb. 3, 2021, ECF No. 2 (from Dkt. Ct. No. 21–00050). In its reply, Defendant argues that Celik's complaint regarding the preliminary determination has now been subsumed into the final determination. *See* Def.'s Reply Br. at 2–4.

## DISCUSSION

Defendant moves to dismiss Celik's complaint for lack of subject matter jurisdiction under 28 U.S.C. § 1581(i), because jurisdiction under § 1581(c) is available. *See* Mot. to Dismiss at 7–11. Moreover, Defendant argues that the final determination, now the subject of a complaint that Celik has filed, subsumes the preliminary determination. *See* Def.'s Reply Br. at 2–4. Celik contends that review under § 1581(c) is manifestly inadequate because, if required to file its complaint under this subsection, Celik will have suffered “irreversible and irreparable harm” by the conclusion of the regular judicial appeal proceedings. *See* Pl.'s Br. at 7–8, 13–17. Celik's argument that this court has jurisdiction under 28 U.S.C. § 1581(i) fails as: (i) the court has jurisdiction under 28 U.S.C. § 1581(c); (ii) jurisdiction under § 1581(c) is not manifestly inadequate. *See Celik Halat ve Tel Sanayi A.S. v. United States*, 45 CIT \_\_, \_\_, Slip Op. 21–31 at 6–12 (Mar. 24, 2021) (“*Celik Halat I*”).

Under 28 U.S.C. § 1581(i), the Court has jurisdiction to hear “any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for . . . (2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue.” 28 U.S.C. § 1581(i)(2). However, § 1581(i) “shall not confer jurisdiction over an

antidumping or countervailing duty determination which is reviewable[] by the Court of International Trade under [19 U.S.C. § 1516a(a)]. . . .” 28 U.S.C. § 1581(i). The legislative history of § 1581(i) demonstrates Congress intended “that any determination specified in [19 U.S.C. § 1516a] or any preliminary administrative action which, in the course of the proceeding, will be, directly or by implication, incorporated in or superseded by any such determination, is reviewable exclusively as provided in [19 U.S.C. § 1516a].” H.R.Rep. No. 96–1235, at 48 (1980), *reprinted in* 1980 U.S.C.C.A.N. 3729, 3759–60. Thus, the Court’s § 1581(i) jurisdiction is available only if the party asserting jurisdiction can show the Court’s § 1581(a)–(h) jurisdiction is unavailable, or the remedies afforded by those provisions would be manifestly inadequate. *See Miller & Co. v. United States*, 824 F.2d 961, 963 (Fed. Cir. 1987) (“*Miller & Co.*”) (“Section 1581(i) jurisdiction may not be invoked when jurisdiction under another subsection of § 1581 is or could have been available, unless the remedy provided under that other subsection would be manifestly inadequate.” (citations omitted)).

Manifest inadequacy exists when, although there is jurisdiction under 28 U.S.C. § 1581(a)–(h), filing suit under one of those subsections would be an “exercise of futility,” meaning that it is “incapable of producing any result.” *See Hartford Fire Ins. Co. v. United States*, 544 F.3d at 1289 (Fed. Cir. 2008) (finding no futility where the plaintiff failed to make a required challenge directly to Customs after a Customs demand for payment, based on unsubstantiated claims that it would be futile to do so because Customs had a financial interest in the challenge and thus was allegedly biased). That judicial review may be delayed by requiring a party to wait for Commerce’s final determination is not enough to render judicial review under § 1581(c) manifestly inadequate. *See Gov’t of People’s Republic of China v. United States*, 31 CIT 451, 461, 483 F. Supp. 2d 1274, 1282 (2007) (“*Gov’t of China v. United States*”). Neither the burden of participating in the administrative proceeding nor the business uncertainty caused by such a proceeding is sufficient to constitute manifest inadequacy. *See, e.g., id.*, 31 CIT at 461–62, 483 F. Supp. 2d at 1283 (citing *FTC v. Standard Oil Co. of California*, 449 U.S. 232, 244 (1980) (“*FTC*”)); *Abitibi–Consolidated Inc. v. United States*, 30 CIT 714, 717–18, 437 F. Supp. 2d 1352, 1356–57 (2006) (“*Abitibi–Consolidated Inc.*”). Financial hardship resulting from review under § 1581(a)–(h) does not constitute manifest inadequacy. *See International Custom Products, Inc. v. United States*, 467 F.3d 1324, 1327–28 (Fed. Cir. 2006) (“*International Custom Products*”) (finding no manifest inadequacy where plaintiff was under threat of imminent bankruptcy as

a result of review under § 1581(a)); *see also Miller & Co.*, 824 F.2d at 964; *American Air Parcel Forwarding Co., Ltd. v. United States*, 718 F.2d 1546, 1550–51 (Fed. Cir. 1983).

As discussed more fully in *Celik Halat I*, financial hardships resulting from a company's participation in administrative proceedings, and subsequent judicial review of such proceedings, is insufficient to render the court's jurisdiction under § 1581(c) manifestly inadequate, even if the financial hardship is severe. *See Celik Halat I*, 45 CIT at \_\_\_, Slip Op. 21–31 at 8–10. Thus, Celik's allegation of the possible future loss of its entire U.S. sales market as a result of waiting for jurisdiction to proceed under § 1581(c) does not rise to the level of manifest inadequacy.<sup>7</sup> *See International Custom Products, Inc. v. United States*, 467 F.3d 1324, 1327–28 (Fed. Cir. 2006) ("*International Custom Products*") (finding no manifest inadequacy where plaintiff was under threat of imminent bankruptcy as a result of review under § 1581(a)).<sup>8</sup> Moreover, Celik's authorities supporting a finding of manifest inadequacy are inapposite here where the claim is that Commerce abused its discretion, *see JIA Farn Mfg. Co. v. Secretary of United States DOC*, 17 CIT 187, 188–89, 817 F. Supp. 969, 971–72 (1993) (addressing whether plaintiff proved manifest inadequacy where Commerce was alleged to have unlawfully initiated an administrative review against the plaintiff); *Asociacion Colombiano de Exportadores de Flores v. United States*, 13 CIT 584, 585–88, 717 F. Supp. 847, 849–51 (1989) (same); *see Sahaviriya Steel Indus. Pub. Co. v. United States*, 601 F. Supp. 2d 1355, 1366 (addressing whether plaintiff proved manifest inadequacy where Commerce was alleged to have acted ultra vires in initiating an administrative review against the plaintiff). Celik does not challenge the lawfulness of the administrative proceedings, but rather challenges Commerce's refusal to accept its untimely questionnaire responses, alleging that this was an abuse of discretion. *See, e.g. Compl.* at ¶ 38–39.

Finally, Commerce's preliminary determination has now merged into the final determination, and thus is unreviewable by this Court. In *FTC v. Standard Oil Co.*, the Supreme Court ruled that where a preliminary determination of an agency constitutes a mere step towards a final decision, and will later merge into the final decision, it

<sup>7</sup> Defendant states that Celik filed a complaint under 28 U.S.C. § 1581(c) less than three months after it filed its complaint under 28 U.S.C. § 1581(i). *See* Def.'s Reply Br. at 4. Although Celik claims that waiting for a decision under 28 U.S.C. § 1581(c) may take up to one to two years, *see* Pl.'s Br. at 7, it is unclear how long a proceeding under either § 1581(c) or § 1581(i) would take, and whether there would be a material difference in the time it took to resolve one versus the other, given that the complaints were filed so close together.

<sup>8</sup> Celik does not allege that it will lose its entire sales market, only its U.S. sales market which it says accounts for 45 percent of its total export business. *See* Compl. at Ex. G, ¶¶ 4, 11–13

is unreviewable at the preliminary juncture *FTC v. Standard Oil Co. of California*, 449 U.S. 232, 246 (1980) (“*FTC*”). As discussed in *Celik Halat I*, Commerce has now published its final results, thus the preliminary determination Celik challenges here has merged into the final results and is not reviewable.<sup>9</sup> See *Celik Halat I*, 45 CIT at \_\_\_, Slip Op. 21–31 at 12.

### CONCLUSION

For the foregoing reasons, it is

**ORDERED** that Defendant’s motion to dismiss for lack of jurisdiction is granted; and it is further

**ORDERED** that the case is dismissed. Judgment will enter accordingly.

Dated: March 24, 2021

New York, New York

*/s/ Claire R. Kelly*

CLAIRE R. KELLY, JUDGE

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<sup>9</sup> As discussed, Commerce initially argued that Celik’s claim is not ripe. See Mot. to Dismiss at 10–11; see *supra* n.2. “Ripeness is a justiciability doctrine designed ‘to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.’” *Nat’l Park Hospitality Ass’n v. U.S. Dep’t of Interior*, 538 U.S. 803, 807–08 (2003). By the time Defendant filed its reply to plaintiff’s response to its motion to dismiss, Commerce had issued an ADD order based on determinations of Commerce and the ITC, and thus Defendant argued that the proceedings were complete, and any preliminary determinations had been subsumed into the final results and order. See Def.’s Reply Br. at 2–4. Commerce has issued final results and Celik is now entitled to challenge those results under 28 U.S.C. § 1581(c).



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