

U.S. Customs and Border Protection


DEPARTMENT OF THE TREASURY
19 CFR Part 12
CBP Dec. 21-06
RIN 1515-AE62

IMPOSITION OF IMPORT RESTRICTIONS ON CATEGORIES OF ARCHAEOLOGICAL MATERIAL OF COSTA RICA

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

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on certain archaeological material from the Republic of Costa Rica (Costa Rica). These restrictions are being imposed pursuant to an agreement between the United States and Costa Rica that has been entered into under the authority of the Convention on Cultural Property Implementation Act. The final rule amends the CBP regulations by adding Costa Rica to the list of countries which have a bilateral agreement with the United States that imposes cultural property import restrictions. The final rule also contains the Designated List that describes the types of archaeological material to which the import restrictions apply.

DATES: Effective on March 31, 2021.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325-0300, ot-otrrculturalproperty@cbp.dhs.gov. For operational aspects, Pinky Khan, Branch Chief, Commercial Targeting and Analysis Center, Trade Policy and Programs, Office of Trade (202) 427-2018, CTAC@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.* (hereinafter, “the Cultural Property Implementation Act”), implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter, “the Convention” (823 U.N.T.S. 231 (1972))). Pursuant to the Cultural Property Implementation Act, the United States entered into a bilateral agreement with Costa Rica to impose import restrictions on certain archaeological material from Costa Rica. This rule announces that the United States is now imposing import restrictions on certain archaeological material from Costa Rica.

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On September 3, 2020, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological material originating in Costa Rica that is described in the Designated List set forth below in this document.

These determinations include the following: (1) That the cultural patrimony of Costa Rica is in jeopardy from the pillage of archaeological material representing Costa Rica’s cultural heritage dating from approximately 12,000 B.C. to A.D. 1550 (19 U.S.C. 2601(a)(1)(A)); (2) that the Costa Rican government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material described in the determinations meets the statutory definition of “archaeological or ethnological material of the State Party” (19 U.S.C. 2601(2)).

The Agreement

On January 15, 2021, the United States and Costa Rica signed a bilateral agreement, “Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Costa Rica Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of Costa Rica” (“the Agreement”), pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement entered into force upon signature, and enables the promulgation of import restrictions on categories of archaeological material representing Costa Rica’s cultural heritage ranging in date from approximately 12,000 B.C. to A.D. 1550. A list of the categories of archaeological material subject to the import restrictions is set forth later in this document.

Restrictions and Amendment to the Regulations

In accordance with the Agreement, importation of material designated below is subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the CBP Regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP Regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the Agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the Agreement still pertain and no cause for suspension of the Agreement exists. The import restrictions will expire on January 15, 2026, unless extended.

Designated List of Archaeological Material of Costa Rica

The Agreement between the United States and Costa Rica includes, but is not limited to, the categories of objects described in the Designated List set forth below. Importation of material on this list is restricted unless the material is accompanied by documentation certifying that the material left Costa Rica legally and not in violation of the export laws of Costa Rica.

The Designated List includes archaeological materials in jade, gold and other metal, ceramics, stone, bone, resin, and shell ranging in date from approximately 12,000 B.C. to A.D. 1550.

Categories of Archaeological Material

I. Jade

II. Gold and Other Metal

III. Ceramic

IV. Stone

V. Bone, Resin, and Shell

Archaeological Material

Approximate chronology of well-known archaeological sites, traditions, and cultures: Archaeological material covered by the Agreement is associated with indigenous groups living in Costa Rica. The three main archaeological zones of Costa Rica are: Guanacaste (also referred to as Greater Nicoya), Central Highlands-Atlantic (or Caribbean) Watershed, and the Southern Zone (also referred to as Greater Chiriquí or Diquís). The following standardized periodization for lower Central America¹ is commonly used in the archaeology of Costa Rica:

(a) Period I (?–8000 B.C.)

(b) Period II (8000–4000 B.C.)

(c) Period III (4000–1000 B.C.)

(d) Period IV (1000 B.C.–A.D. 500)

(e) Period V (A.D. 500–1000)

(f) Period VI (A.D. 1000–1550)

(g) European contact and Colonial period (A.D. 1500–1821)²

I. Jade

Archaeological jade objects may be made from several types of stone such as jadeite, jadeitite, serpentine, omphacite, agate, chalcedony, jasper, slate, opal, and quartz. These stones are various shades of green, as well as white, beige, brown, and black. Most jade objects

¹ Lange, Frederick W., and Doris Stone. 1984. *The Archaeology of Lower Central America*. Albuquerque: University of New Mexico Press.

² Import restrictions concerning European contact period archaeological material apply only to those objects dating to A.D. 1550 and earlier.

were used for personal adornment. Examples of archaeological jade objects covered in the bilateral agreement include, but are not limited to, the following objects:

A. *Pendants*—Celtiform pendants (sometimes called Axe-gods) may have human, avian, or composite human and avian figures carved on the upper portion and perforations for suspension. Some feature bats, and rare examples have Olmecoid faces and features. Celtiform pendants can be made from whole-, half-, and even sixth-celt blanks. Figure pendants may be carved into the shape of “beak-birds,” “curly-tailed animals,” humans, frogs, monkeys, crocodiles, saurians, or bats. Some human pendants wear masks or headdresses. Staff-bearer pendants depict a human wearing a mask or headdress carrying a vertical staff topped with a zoomorphic effigy. Horizontal zoomorphic pendants may be double-ended, and horizontal bat pendants often emphasize wings that terminate in crocodile heads. Some pendants, imported to Costa Rica in antiquity, have incised Epi-Olmec or Maya carvings and hieroglyphic inscriptions.

B. *Beads*—Most jade beads are tubular in shape and vary in size. Large tubular beads may be up to approximately 50 cm long and have low-relief geometric or zoomorphic carving. Disc-shaped beads are also common.

C. *Ear ornaments*—Spool-shaped ear flares may have openwork decoration in the center.

D. *Vessels*—Miniature jade jars, often measuring about 6 cm tall, may be round with little decoration or have two zoomorphic or anthropomorphic heads on opposite sides. They often have perforations for strings to keep lids in place.

E. *Mace heads*—Jade mace heads, which may be carved into avian, bat, feline, or anthropomorphic effigies, have large holes drilled in the center for mounting on staffs.

II. *Gold and Other Metal*

Most archaeological metal objects from Costa Rica are personal ornaments made from gold or a gold-copper alloy known as tumbaga or guanín. Objects were produced by lost-wax casting or cold hammering and annealing. Examples of archaeological gold and other metal objects covered in the bilateral agreement include, but are not limited to, the following objects:

A. *Zoomorphic pendants*—Zoomorphic pendants most commonly depict avians, crocodilians, saurians, and snakes. Bats, butterflies, spiders, frogs, felines, turtles, lobsters, crabs, fish, armadillos, and deer are also represented. Many pendants combine features of more

than one creature. Dual figures depict a single body with two heads and two tails. Some zoomorphic pendants hold human bodies or limbs in the mouth.

B. *Anthropomorphic pendants*—Elaborate human figures may be depicted wearing zoomorphic masks or display a mix of human and animal or supernatural traits. Some human figures play musical instruments such as flutes or drums, are surrounded by attendant figures, have square or round frames, or have dangling pendants.

C. *Bells*—Bells may be undecorated or decorated with zoomorphic figures such as monkeys or spiders. Complete bells may have loose ceramic or stone clappers.

D. *Hammered ornaments*—Hammered gold discs, chest plates, cuffs, diadems, ear spools, and beads may have embossed geometric, anthropomorphic, or zoomorphic motifs.

E. *Tools*—Needles, fish hooks, tweezers, and punches may be made of metal.

III. *Ceramic*

Archaeological ceramics in Costa Rica are low-fired terracotta, typically coil-and slab-built, but sometimes produced using molds. Hollow mammiform, rattle, figural, and slab tripod vessel supports are common. Decorations can be monochrome, bichrome, trichrome, or polychrome made with slip, paint, negative (or resist) paint, burnishing, and polishing. The most common colors are brown, black, and red, but can include white, orange, and purple. Decorations, in addition to slips and paints, include impressions, incisions, engraving, appliqué, and modeling. Most designs are geometric, linear, and/ or divided into zones. Common zoomorphic designs include felines, birds, crocodilians, saurians, marine animals, deer, monkeys, tapirs, and peccaries. Humans may be depicted wearing zoomorphic masks or as composite figures with combined anthropomorphic and zoomorphic features. Some female figures hold infants. Other figures may be dressed in ostentatious clothing and/or show decapitated heads.

Archaeological cultures in the three cultural zones of Costa Rica produced distinctly different styles, especially after about A.D. 500. For example, well-known ceramics from the Guanacaste zone have white- and salmon-colored slip with polychrome decoration, which may include distinctive blue-gray or orange paints. Well-known ceramics from the Central and Atlantic (or Caribbean) Watershed zone are monochrome or bichrome with incised and molded decorations. The best-known ceramics from the Southern Zone are polychrome

vessels with white slips decorated with geometric painting in black and red and fine-walled beige or natural-colored “biscuit” ware with small molded decorations.

Examples of archaeological ceramic objects covered in the bilateral agreement include, but are not limited to, the following objects:

A. *Vessels*—Ceramic vessels include plates, bowls, jars, effigy vessels, and incense burners. Plates have flat or slightly convex bases, sometimes with tripod supports. Bowls sometimes have tripod supports or annular supports. Bowls may have decorated exteriors, interiors, and rims with modeled decoration. Some bowls have anthropomorphic or zoomorphic forms. Jars, often called ollas, are globular vessels with short necks that may have tripod or annular supports. Some jars are shoe-shaped or gourd-shaped, neckless vessels called tecomates. Jars may be decorated on the exterior with zoned paint, modeled decoration, or linear paint depicting geometric designs or have human faces on the neck or body. Effigy vessels are containers sculpted in human or animal forms, sometimes with bridge-and-spout forms. Incense burners, or incensarios, may have hemispherical bases and a ventilated lid decorated with a modeled crocodilian or saurian effigy. Skillet-like incense burners may have zoomorphic handles.

B. *Pot stands, stools, and griddles*—Pot stands are flared, cylindrical objects that may have bases made from rings of human figures and/or modeled birds. Thick buff-colored pottery stools have bases with modeled zoomorphic or anthropomorphic figures. Griddles, known as budares, have flat surfaces for cooking.

C. *Figurines*—Anthropomorphic figurines include both solid and hollow forms, the latter of which can include rattles. Common forms include figures with flattened headdresses sometimes seated on benches, female figurines holding infants, and hunchbacks.

D. *Musical instruments*—Musical instruments include maracas, rattles, ring-rattles, ocarinas, whistles, flutes, and drums. Ocarinas can be in the shape of humans, birds, turtles, and other animals.

E. *Stamps*—Stamps may be roller stamps or have one flat surface with a design for stamping or sealing. Surfaces typically have deep, geometric decorations that would transfer with pigment to cloth or skin.

F. *Inhalers and pipes*—Inhalers and pipes may be single-tubed pipes or double-tubed nasal snuffers.

G. *Beads*—Beads typically are small, round, perforated objects intended to be strung on cords.

IV. Stone

Early chipped-stone tools mark the appearance of the first people to inhabit the region and continued to be used throughout history. Highly skilled stoneworkers created elaborately carved stone sculpture from basalt and andesite, volcanic stones common in Costa Rica. The most common material is grey vesicular andesite, distinguished by its rough surface. Examples of archaeological stone objects covered in the bilateral agreement include, but are not limited to, the following objects:

A. *Metates* (grinding tables)—Both simple and elaborately carved flying-panel metates and special-purpose lithic platforms are typically made from porous basalt. Forms may be rectangular, oval, or circular. Tripod metates with curved rimless plates may have elaborately carved low-relief decoration on the underside of the plate featuring abstract designs, deities, and animals; elaborately carved legs; and/or zoomorphic heads extending from the plate, especially felines, jaguars, monkeys, crocodiles, saurians, avians, and canines. Metates with flat plates and raised rims may have decorated rims and have three cylindrical supports connected by “flying panels” with open-carving depicting multiple human and/or animal figures, decapitated human heads, and an anthropomorphic central figure wearing a saurian or avian mask. Tetrapod metates may have a border of stylized human heads and supports that may be in the form of human figures or human heads. Feline-effigy metates typically have a head extending from one end of the plate, a tail from the opposite end, and four supports representing legs that may be connected by open-carving depicting monkeys or other animals. Circular pedestal tables may have a single base with vertical slots and small feline figures or heads pendant from the table surface. Plain, rimless metates typically have tripod supports.

B. *Manos* (handstones) and pestles—A mano or pestle can be a round, loaf-shaped, or cylindrical hand-held stone used with a metate or mortar to pulverize grains, tubers, spices, and medicinal plants. Manos and pestles may have low-relief, zoomorphic or geometric carving at one or both ends. Flared-head manos may have a finely abraded working surface. Stirrup-shaped manos may have carved anthropomorphic forms incorporated into the upper part. More delicate manos may have a thin, flat grinding surface with a zoomorphic figure serving as a handle.

C. *Biconical effigy seats*—Hourglass-shaped seats may be decorated with modeling and relief carving depicting an abstract crocodilian or saurian head and geometric designs.

D. *Bowls or receptacles*—Stone bowls may be supported by anthropomorphic or zoomorphic figures. Reclining figures with a shallow bowl in the belly, sometimes called chacmools, can combine feline, raptorial, and snake features.

E. *Figural sculpture*—Free-standing sculpture depicts a variety of figures in various sizes. Anthropomorphic figures typically about 30 cm tall wear crocodilian masks, tubular bead pendants, and multi-tiered headdresses. Stylized anthropomorphic peg-base figures, typically about 25–35 cm tall, often have a bifurcated tongue, hair ending in snakes, and N-shaped feline incisors. Some carry trophy heads. Large, realistic anthropomorphic figures, typically ranging in size from 50 cm to 1 m, may be female figures holding the breasts with brief girdles and plastered-down coiffures; bound, naked male prisoners; or males displaying an axe and trophy head. Small female and male figurines, typically about 12 cm tall, may grasp cylindrical shaped objects in each hand. Seated human figures, known as sukias, typically measure about 25 cm tall and rest their elbows on their knees while holding a tube to their mouths. Independent human heads, known as trophy heads, may measure about 15 cm tall and have varied facial features and hair or hat motifs. Independent feline heads may be decorated in low relief. Rounded zoomorphic effigy figures of varied size usually depict felines, though other animals like armadillos are also known.

F. *Figure-decorated mortuary slabs*—Thin, decorated slabs that probably stood vertically as grave markers may have a row of figures in low relief along each side and openwork figures at the top.

G. *Petroglyphs*—Petroglyphs typically display carved motifs on one rock face or on multiple sides of a stone. Most motifs are abstract geometric motifs, often with spirals or rounded designs. Some petroglyphs include zoomorphic engravings such as crocodilians, saurians, human faces, and human figures.

H. *Mace heads*—Stone mace heads may be spherical or carved in the shape of human heads, human skulls, owls, bats, avians, canines, felines, or saurians.

I. *Stone spheres*—Stone spheres are typically made of gabbro or granodiorite but can also be made from limestone. Stone spheres range from less than 10 cm up to about 2.6 m in diameter.

J. *Polished stone tools*—Polished stone tools may include celts, chisels, and hoes, typically ranging in size from 3 to 20 cm. Figure-decorated celts may be made from various jades (discussed above) and volcanic stone. Bark beaters are oval plaques scored with deep incisions on one face.

K. *Chipped-stone tools*—Chipped-stone tools may include projectile points, waisted axes, and other tools for scraping, cutting, or perforating. Early, extremely rare Paleoindian and Archaic projectile points include Clovis and Fluted Fishtail points.

V. *Bone, Resin, and Shell*

Examples of archaeological bone, resin, and shell objects covered in the bilateral agreement include, but are not limited to, the following objects.

A. *Personal ornaments*—Pendants, ear spools, and beads typically are made from shell or bone.

B. *Figurines*—Figurines made from resin may have gold sheathing.

C. *Tools*—Tools may include bone points and awls, burnishers, needles, spatulas, and fishhooks.

References

National Museum of Costa Rica, Archaeological Collections:

<https://www.museocostarica.go.cr/nuestro-trabajo/colecciones/arqueologia/>

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, the table in paragraph

(a) is amended by adding Costa Rica to the list in alphabetical order to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) ***

State party	Cultural property	Decision No.
	* * * * *	
Costa Rica ..	Archaeological material representing Costa Rica's cultural heritage from approximately 12,000 B.C. to A.D. 1550.	CBP Dec. 21-06.
	* * * * *	

* * * * *

Troy A. Miller, the Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

ROBERT F. ALTNEU,
Director,
Regulations & Disclosure Law Division,
Regulations & Rulings, Office of Trade,
U.S. Customs and Border Protection.

Dated: March 26, 2021.

TIMOTHY E. SKUD,
Deputy Assistant
Secretary of the Treasury.

[Published in the Federal Register, April 1, 2021 (85 FR 17055)]

CBP Dec. 21-08

**NOTICE OF FINDING THAT CERTAIN DISPOSABLE
GLOVES PRODUCED IN MALAYSIA WITH THE USE OF
CONVICT, FORCED OR INDENTURED LABOR ARE BEING,
OR ARE LIKELY TO BE, IMPORTED INTO THE UNITED
STATES**

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

ACTION: General notice of forced labor finding.

SUMMARY: This document notifies the public that U.S. Customs and Border Protection (CBP), with the approval of the Secretary of Homeland Security, has determined that certain disposable gloves, have been mined, produced, or manufactured in Malaysia by Top Glove Corporation Bhd with the use of convict, forced or indentured labor, and are being, or are likely to be, imported into the United States.

DATES: This Finding applies to any merchandise described in Section II of this Notice that is imported on or after March 29, 2021. It also applies to merchandise which has already been imported and has not been released from CBP custody before March 29, 2021.

FOR FURTHER INFORMATION CONTACT: M. Estrella, Chief, Operations Branch, Forced Labor Division, Trade Remedy Law Enforcement Directorate, Office of Trade, (202) 325-6087 or *forcedlabor@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307), “[a]ll goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited.” Under this section, “forced labor” includes “all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily” and includes forced or indentured child labor.

The CBP regulations promulgated under the authority of 19 U.S.C. 1307 are found at sections 12.42 through 12.45 of title 19, Code of Federal Regulations (CFR) (19 CFR 12.42–12.45). Among other

things, these regulations allow any person outside of CBP to communicate his belief that a certain “class of merchandise . . . is being, or is likely to be, imported into the United States [in violation of 19 U.S.C. 1307].” 19 CFR 12.42(a), (b). Upon receiving such information, the Commissioner “will cause such investigation to be made as appears to be warranted by the circumstances” 19 CFR 12.42(d). CBP also has the authority to self-initiate an investigation. 19 CFR 12.42(a). If the Commissioner of CBP finds that the information available “reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be, imported,” the Commissioner will order port directors to “withhold release of any such merchandise pending [further] instructions.” 19 CFR 12.42(e). After issuance of such a withhold release order, the covered merchandise will be detained by CBP for an admissibility determination, and will be excluded unless the importer demonstrates that the merchandise was not made using labor in violation of 19 U.S.C. 1307. 19 CFR 12.43–12.44. The importer may also export the merchandise. 19 CFR 12.44(a).

These regulations also set forth the procedure for the Commissioner of CBP to issue a Finding when it is determined that the merchandise is subject to the provisions of 19 U.S.C. 1307. Pursuant to 19 CFR 12.42(f), if the Commissioner of CBP determines that merchandise within the purview of 19 U.S.C. 1307 is being, or is likely to be, imported into the United States, the Commissioner of CBP will, with the approval of the Secretary of the Department of Homeland Security (DHS), publish a Finding to that effect in the Customs Bulletin and in the **Federal Register**.¹ Under the authority of 19 CFR 12.44(b), CBP may seize and forfeit imported merchandise covered by a Finding.

On July 15, 2020, CBP issued a withhold release order on “disposable gloves” reasonably indicated to be manufactured by forced labor in Malaysia by Top Glove Corporation Bhd. Through its investigation, CBP has determined that there is sufficient information to support a Finding that Top Glove Corporation Bhd is manufacturing disposable gloves with forced labor and that such merchandise is likely being imported into the United States.

¹ Although the regulation states that the Secretary of the Treasury must approve the issuance of a Finding, the Secretary of the Treasury delegated this authority to the Secretary of Homeland Security in Treasury Order No. 100–16 (68 FR 28322). In Delegation Order 7010.3, Section II.A.3, the Secretary of Homeland Security delegated the authority to issue a Finding to the Commissioner of CBP, with the approval of the Secretary of Homeland Security. The Commissioner of CBP, in turn, delegated the authority to make a Finding regarding prohibited goods under 19 U.S.C. 1307 to the Executive Assistant Commissioner, Office of Trade.

II. Finding

A. General

Pursuant to 19 U.S.C. 1307 and 19 CFR 12.42(f), it is hereby determined that certain articles described in paragraph II.B., that are mined, produced, or manufactured in whole or in part with the use of convict, forced, or indentured labor by Top Glove Corporation Bhd in Malaysia, are being, or are likely to be, imported into the United States. Based upon this determination, the port director may seize the covered merchandise for violation of 19 U.S.C. 1307 and commence forfeiture proceedings pursuant to 19 CFR part 162, subpart E, unless the importer establishes by satisfactory evidence that the merchandise was not produced in any part with the use of prohibited labor specified in this Finding.

B. Articles and Entity Covered by This Finding

This Finding covers disposable gloves classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 3926.20.1020, 4015.11.0150, 4015.19.0510, 4015.19.0550, 4015.19.1010, 4015.19.1050, and 4015.19.5000, which are mined, produced or manufactured wholly or in part by Top Glove Corporation Bhd in Malaysia.

The Secretary of Homeland Security has reviewed and approved this Finding.

Dated: March 23, 2021.

BRENDA B. SMITH,
*Executive Assistant Commissioner,
Office of Trade.*

[Published in the Federal Register, March 29, 2021 (85 FR 16380)]

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF AIR
SPRINGS**

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of air springs.

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 modify one ruling letter concerning tariff classification of air springs 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 14, 2021.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Erin Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325–1757.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at suzanne.kingsbury@cbp.dhs.gov.

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 modify one ruling letter pertaining to the tariff classification of air springs. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") R01224, dated January 18, 2005, (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY R01224, CBP classified air springs in heading 8708, HTSUS, specifically in subheading 8708.99.55, HTSUS, which provides for "[P]arts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other." CBP has reviewed NY R01224 and has determined the ruling letter to be in error. It is now CBP's position that air spring is properly classified, in heading 4016, HTSUS, specifically in subheading 4016.99.55, HT-

SUS, which provides for “[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY R01224 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H305332, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

PATRICIA FOGLE

for

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

Attachments

NY R01224

January 18, 2005

CLA-2-87:RR:NC:MM:101 R01224

CATEGORY: Classification

TARIFF NO.: 8302.30.3060, 8708.80.4500,
8708.99.5500, 8708.99.7030

MR. DENNIS FORHART
PRICewaterhouseCOOPERS LLP
1420 FIFTH AVENUE
SUITE 1900
SEATTLE, WASHINGTON 98101

RE: The tariff classification of *Heavy-Truck Parts* from the United States

DEAR MR. FORHART:

In your letter dated December 22, 2004 you requested a tariff classification ruling.

You submitted technical drawings for five (5) heavy-truck related parts.

- Part Number: 18-45195-000 – CAB-SUSPENSION MOUNT ASSY
- Part Number: 18-45068-000 – AIR SPRING-CAB AIR SUSP
- Part Number: A16-17122-000 – BRKT-UPPER T-ROD, EFA AXLE
- Part Number: A16-14019-002 – BRKT, SHKL-W/RUBBER B
- Part Number: 16-17419-001 HANGER-FRONT SPRING, DRIVE, RH

CAB-SUSPENSION MOUNT ASSY – The purpose of this part is to absorb the road shock and vibration transmitted through the frame and solid cab mounts to the cab/driver compartment. This is a complete assembly whose main components are shock absorbers, air spring, height control valve, cab and frame mounting brackets, valve link, and pull strap (plus other smaller components).

AIR SPRING-CAB AIR SUSP – this is an air cushion system designed to dampen road vibrations and shocks that would otherwise be transmitted from the truck frame to the passenger compartment. This system leads to a smoother ride than traditional coil/leaf springs. The bellow is made of vulcanized rubber layers and cord-reinforced fabric layers. It has a metal plate on top, a rubber bumper, and a metal piston mount. This item does not include any sort of metal spring.

BRKT-UPPER T-ROD, EFA AXLE – This bracket lies on top of one of the rear axles, one of the suspension torque rods mounts directly to this bracket. The spring seat lies on top of this bracket, and in turn then supports the suspension leaf spring. The bracket contains a separate bronze bushing that acts as a plain shaft bearing, which allows for the leaf spring to pivot about the axle.

BRKT, SHKL-W/RUBBER B – This is the front suspension shackle bracket. This bracket mounts to the outer face of the truck's frame rail. A bolt, which attaches to spring shackle plate to the bracket, goes through a rubber bushing contained in the lower half of the bracket. The spring shackle plate then attaches to one end of the front suspension bushing. The composition of this part is aluminum with rubber bushing.

HANGER-FRONT SPRING, DRIVE, RH – This spring hanger bracket is used in the front air suspension assembly. The bracket mounts onto the truck’s frame rail. One end of the front suspension spring attaches, in a hanging fashion, from the lower end of this bracket – therefore the term “hanger bracket”. This part is made of ductile iron.

You state that you believe that the *CAB-SUSPENSION MOUNT ASSY* is correctly classified under HTS 8708.99.8080. We disagree with your proposed classification because this part is more correctly classified as a suspension shock absorber.

The applicable subheading for the *CAB-SUSPENSION MOUNT ASSY* will be **8708.80.4500**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Parts and accessories of the motor vehicles of headings 8701 to 8705: Suspension shock absorbers: For other vehicles: Other*.

You state that you believe that the *AIR SPRING-CAB AIR SUSP* is correctly classified under HTS 4016.99.5500 as other articles of vulcanized rubber. We disagree with your proposed classification because this part is more specifically provided for as a vibration control device containing rubber.

The applicable subheading for the *AIR SPRING-CAB AIR SUSP* will be **8708.99.5500**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Vibration control goods containing rubber*.

The applicable subheading for the *BRKT-UPPER T-ROD, EFA AXLE* and the *BRKT, SHKL-W/RUBBER B* will be **8302.30.3060**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Base metal mountings, fittings, and similar articles...of base metal; and parts thereof: Other mountings, fittings, and similar articles suitable for motor vehicles; and parts thereof: Of iron or steel, of aluminum or of zinc...Other*.

The applicable subheading for the *HANGER-FRONT SPRING, DRIVE, RH* will be **8708.99.7030**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Parts for suspension systems...Beam hanger brackets*.

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 Robert DeSoucey at 646–733–3008.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

HQ H305332
OT:RR:CTF:EMAIN H305332 SKK
CATEGORY: Classification
TARIFF NO.: 4016.99.55

MR. DENNIS FORHART
PRICEWATERHOUSECOOPERS LLP
1420 FIFTH AVENUE
SUITE 1900
SEATTLE, WASHINGTON 98101

RE: Modification of NY R01224; tariff classification of an air spring

DEAR MR. FORHART:

In New York Ruling Letter (NY) R01224, issued to you on January 18, 2005, U.S. Customs and Border Protection (CBP) classified five (5) heavy-truck related parts under various provisions of the Harmonized Tariff Schedule of the United States (HTSUS). At issue in this reconsideration of NY R01224 is the tariff classification of one of those items, referenced “Part Number 18–45068–000 – AIR SPRING-CAB AIR SUSP,” which was classified under 8708, HTSUS, specifically subheading 8708.99.55, HTSUS, which provides for “[P]arts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other.”

For the reasons set forth below, we are modifying that portion of NY R01224 pertaining to “Part Number 18–45068–000 – AIR SPRING-CAB AIR SUSP.”

FACTS:

The product at issue in NY R01224 that is the subject of this reconsideration is referenced Part Number 18–45068–000 -- AIR SPRING-CAB AIR SUSP (“air spring”). This item is an air cushion system designed to dampen road vibrations and shocks transmitted from the truck frame to the passenger compartment. The subject air spring is situated between the frame of the vehicle and the wheel axle and functions as an integral part of the suspension system to suspend the vehicle load above the wheels. It functions in a manner analogous to a standard coil spring/strut combination used in standard passenger vehicle suspension systems. Compressed air is introduced into the bellow through the air fitting port on the bead plate. The rubber bellow is flexible, and the amount of air it contains varies as it adjusts its dampening effects under various load and road conditions. The subject air spring consists of a metal bead plate, a flexible bellow made of vulcanized rubber reinforced with nylon cord, and a rubber bumper and metal piston mount. This item does not include any sort of metal spring.

LAW AND ANALYSIS:

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

Heading 8708, HTSUS, provides for parts and accessories of the motor vehicles of headings 8701 to 8705. Although there is no dispute that the subject air spring is used in automotive applications and described by the terms of this heading, GRI 1 directs that the terms of any relative section or chapter notes must also be considered. In this regard, we note that heading 8708 falls within Section XVII of the Harmonized System.

Section XVII Note 2(a) provides:

2.- The expressions “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:

(a) Joints, washers or the like of any material (classified according to their constituent material or in heading 84.84) or other articles of vulcanised rubber other than hard rubber (heading 40.16);

As Section XVII Note 2(a) excludes “other articles of vulcanized rubber” from heading 8708, HTSUS, and directs their classification to heading 4016, HTSUS, it must be determined whether the subject air spring falls within this exclusion. As noted *supra*, the subject air spring is a composite good made up of components of different materials. Pursuant to GRI 3(b), composite goods consisting of different materials, which cannot be classified by reference to 3(a), are to be classified as if they consisted of the material or component that gives them their essential character.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to GRI 3(b) provide, in pertinent part:

(VII) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

The subject air spring is designed to absorb road vibrations and shocks transmitted from a truck’s frame to its passenger compartment. This function is performed by the air spring’s bellow component, as it holds the compressed air and provides the requisite flexibility to absorb movements made by a vehicle as it encounters bumps on road surfaces. As such, it is the vulcanized rubber bellow that imparts the essential character to the air spring, making it an article of rubber. As a result, classification of the air spring in heading 8708, HTSUS, is precluded by Note 2(a) to Section XVII, and classification falls to heading 4016, HTSUS, specifically subheading 4016.99.5500, HTSUS, which provides for “[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Other.” *See* NY N303352, NY N303345 and NY N303355, all dated March 28, 2019, in which air springs with rubber com-

ponents were classified in subheading 4016.99.55, HTSUS. CBP has also classified various automotive composite goods with rubber components in heading 4016, HTSUS. *See* NY N012179, dated June 21, 2007, exhaust hanger bracket with rubber bushing); NY N273173, dated March 15, 2016, (vibration control goods); NY N197908, dated January 18, 2012, (seal for drive axle assembly).

HOLDING:

By application of GRIs 1 and 3(b), the item identified as part number 18-45068-000 -- AIR SPRING-CAB AIR SUSP in NY R01224 is classified under heading 4016, HTSUS, specifically subheading 4016.99.55, HTSUS, which provides for “[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Other.” The applicable rate of duty is 2.5% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov.

The other four (4) items at issue in NY R01224 remain unaffected by this reconsideration.

EFFECT ON OTHER RULINGS:

NY R01224, dated January 18, 2005, is hereby MODIFIED.

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

APPLICATION FOR IDENTIFICATION CARD

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

ACTION: 60-Day Notice and request for comments; Extension with change of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection, Department of Homeland Security, 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 June 1, 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 1651-0008 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 for Identification Card.

OMB Number: 1651-0008.

Form Number: CBP Form 3078.

Current Actions: Extension with an increase in burden hours.

Type of Review: Extension (with change).

Affected Public: Businesses

Abstract: CBP Form 3078, *Application for Identification Card*, is filled out in order to obtain an Identification Card that is used to gain access to CBP security areas. This form collects biographical information and is usually completed by Broker's Employee, CBP Security Area Identification, Warehouse Officer or Employee, Container Station Employee, Foreign Trade Zone Employee, CES Employee, licensed Cartmen or Lightermen whose duties require receiving, transporting, or otherwise handling imported merchandise which has not been released from CBP custody. This form may be submitted electronically or to the local CBP office at the port of entry that the respondent will be requesting access to the Federal Inspection Section (FIS). Form 3078 is authorized by 19 U.S.C. 66, 1551, 1555, 1565, 1624, 1641; and 19 CFR 112.41, 112.42, 118, 122.182, and 146.6. This form is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=3078&=Apply>.

Type of Information Collection: CBP Form 3078.

Estimated Number of Respondents: 200,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 0.283 hours.

Estimated Total Annual Burden Hours: 56,600.

Dated: March 25, 2021.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, March 30, 2021 (85 FR 16605)]

**COPYRIGHT, TRADEMARK, AND TRADE NAME
RECORDATIONS
(No. 02 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 174 recordation applications were approved, consisting of 8 copyrights and 166 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.

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 — FEBRUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 01-00556	02/25/2021	10/05/2023	STOLI	ZHS IP AMERICAS SARL	No
TMK 02-00058	02/10/2021	02/13/2031	NBA & DESIGN	NBA PROPERTIES, INC.	No
TMK 02-00327	02/01/2021	05/13/2026	S & W & Design	DEL MONTE FOODS, INC.	No
TMK 03-00924	02/12/2021	02/06/2031	PROCELL	DURACELL U.S. OPERATIONS, INC.	No
TMK 04-00466	02/09/2021	02/13/2031	SONY (STYLIZED)	SONY CORPORATION	No
TMK 04-01070	02/24/2021	11/21/2024	STOLICHNAYA	ZHS IP AMERICAS SARL	No
TMK 05-00473	02/01/2021	01/16/2031	WOOLRICH	JOHN RICH AND SONS INVESTMENT HOLDING COMPANY	No
TMK 05-00702	02/10/2021	02/13/2031	B Prorsum & Design	BURBERRY LIMITED	No
TMK 05-00717	02/01/2021	07/02/2025	PLAYBOY	PLAYBOY ENTERPRISES INTERNATIONAL, INC.	No
TMK 05-00868	02/01/2021	05/08/2027	RABBIT HEAD DESIGN	PLAYBOY ENTERPRISES INTERNATIONAL, INC.	No
TMK 05-00869	02/04/2021	12/12/2025	RABBIT HEAD DESIGN	PLAYBOY ENTERPRISES INTERNATIONAL, INC.	No
TMK 06-00145	02/03/2021	09/01/2026	PLAYBOY	Playboy Enterprises International, Inc.	No
TMK 06-00146	02/04/2021	04/19/2025	PLAYBOY	PLAYBOY ENTERPRISES INTERNATIONAL, INC.	No

CBP IPR RECORDATION — FEBRUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 06-00148	02/04/2021	06/28/2025	PLAYBOY	PLAYBOY ENTERPRISES INTERNATIONAL, INC.	No
TMK 06-01281	02/03/2021	12/05/2026	PLAYBOY	Playboy Enterprises International, Inc.	No
TMK 06-01350	02/05/2021	03/05/2031	FAIRCHILD SEMICONDUCTOR & DESIGN SIGN	FAIRCHILD SEMICONDUCTOR CORPORATION	No
TMK 07-00020	02/10/2021	02/14/2031	SHURE	Shure Incorporated	No
TMK 07-00021	02/11/2021	02/07/2031	SHURE (Stylized)	Shure Incorporated	No
TMK 07-00236	02/01/2021	04/02/2027	RABBIT HEAD DESIGN	Playboy Enterprises International, Inc.	No
TMK 08-00039	02/03/2021	01/09/2028	RABBIT HEAD DESIGN	Playboy Enterprises International, Inc.	No
TMK 08-00053	02/01/2021	04/14/2029	DESIGN (PRANCING HORSE)	Ferrari S.p.A.	No
TMK 08-00137	02/19/2021	12/12/2030	SD (STYLIZED)	SD-3C LLC	No
TMK 08-00170	02/01/2021	08/09/2026	IPOD	APPLE INC.	No
TMK 08-00571	02/03/2021	08/15/2027	PLAYBOY	Playboy Enterprises International, Inc.	No
TMK 08-00738	02/01/2021	04/30/2031	PLANETPRESS	OBJECTIF LUNE INC.	No
TMK 09-00329	02/12/2021	07/25/2026	RUGER	STURM, RUGER & COMPANY, INC.	No
TMK 09-00346	02/25/2021	11/21/2030	PALMER'S	E. T. BROWNE DRUG CO., INC.	No
TMK 09-00424	02/12/2021	04/15/2028	R & Eagle Design (Ruger Logo)	Sturm, Ruger and Co., Inc.	No
TMK 09-00427	02/12/2021	08/30/2026	RUGER	STURM, RUGER & COMPANY, INC.	No
TMK 09-00428	02/12/2021	07/18/2026	RUGER	STURM, RUGER & COMPANY, INC.	No

CBP IPR RECORDATION — FEBRUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 09-00429	02/12/2021	06/14/2026	RUGER	STURM, RUGER & COMPANY, INC.	No
TMK 09-01093	02/19/2021	02/13/2031	QUALCOMM	QUALCOMM INCORPORATED	No
TMK 10-00369	02/19/2021	03/15/2031	MOTRIN	JOHNSON & JOHNSON CORPORATION	No
TMK 11-00099	02/09/2021	04/19/2030	Coffee Cup Logo (New JAVA Logo)	ORACLE AMERICA, INC.	No
TMK 11-00895	02/03/2021	02/18/2031	ZOVIRAX	GLAXOSMITHKLINE LLC	No
TMK 12-00056	02/19/2021	07/24/2031	ZORBAND	EXELINT INTERNATIONAL CO.	No
TMK 12-00160	02/01/2021	10/27/2031	Superspeed Trident Logo & Design	USB IMPLEMENTERS FORUM, INC.	No
TMK 12-00699	02/03/2021	12/28/2030	Green and Yellow Color Combination	Deere & Company	No
TMK 12-00708	02/03/2021	12/28/2030	Green and Yellow Color Combination	Deere & Company	No
TMK 12-00890	02/19/2021	02/09/2031	5.11	5.11, Inc.	No
TMK 12-01016	02/10/2021	07/11/2030	BELKIN	BELKIN INTERNATIONAL INC.	No
TMK 14-00342	02/09/2021	02/08/2031	NACHI	Nachi-Fujikoshi Corp.	No
TMK 14-00570	02/10/2021	10/13/2030	MALIBU & DESIGN	THE ABSOLUT COMPANY	No
TMK 14-00881	02/01/2021	02/23/2030	DESIGN (PRANCING HORSE)	Ferrari S.p.A.	No
TMK 15-00055	02/12/2021	02/09/2031	PROTECTED BY SMITH & WESSON	SMITH & WESSON INC.	No
TMK 15-00101	02/01/2021	10/01/2028	DESIGN (PRANCING HORSE)	Ferrari S.p.A.	No
TMK 15-00161	02/01/2021	01/17/2031	PEPPERIDGE FARM & DESIGN	PEPPERIDGE FARM, INCORPORATED	No
TMK 15-01227	02/19/2021	02/16/2031	YELLAWOOD (STYLIZED)	Great Southern Wood Preserving, Inc.	No

CBP IPR RECORDATION — FEBRUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 16-00730	02/05/2021	04/09/2031	GLOBAL	YOSHIDA METAL INDUSTRY CO., LTD.	No
TMK 16-00890	02/17/2021	11/24/2030	HURRICANE	TELEBRANDS CORP.	No
TMK 17-00031	02/10/2021	02/02/2031	NUTREX RESEARCH & DESIGN	Nutrex Research, Inc.	No
TMK 17-00032	02/09/2021	02/02/2031	NUTREX RESEARCH & DESIGN	Nutrex Research, Inc.	No
TMK 17-00279	02/09/2021	02/23/2031	JOIN THE LOOP	WEST PAW DESIGN, INC.	No
TMK 17-00504	02/10/2021	02/02/2031	GUESS SEDUCTIVE	Guess? IP Holder L.P.	No
TMK 17-00654	02/24/2021	10/22/2024	ARUBA	HEWLETT PACKARD ENTERPRISE DEVELOPMENT LC	No
TMK 17-01043	02/12/2021	02/09/2031	TONNO PRO & DESIGN	LUND, INC.	No
TMK 17-01235	02/10/2021	02/06/2031	BROWNING	BROWNING	No
TMK 18-00477	02/09/2021	02/28/2031	SLIM SWAN DESIGN	Swarovski Aktiengesellschaft	No
TMK 18-00480	02/09/2021	02/07/2031	SWAROVSKI	Swarovski Aktiengesellschaft	No
TMK 18-00675	02/02/2021	10/27/2030	FACEBOOK	Facebook, Inc.	No
TMK 19-00440	02/19/2021	03/07/2031	THE FLEX MINI	SLENDERTONE DISTRIBUTION INC.	No
TMK 20-00033	02/12/2021	06/03/2031	IAPMO T & DESIGN	International Association of Plumbing and Mechanical Officials	No
TMK 21-00118	02/01/2021	02/13/2029	THE COMFY	Cozy Comfort Company LLC	No
TMK 21-00119	02/01/2021	01/29/2030	The Panda Design	Cozy Comfort Company LLC	No
TMK 21-00120	02/01/2021	06/24/2030	The Comfy & Design	Cozy Comfort Company LLC	No

CBP IPR RECORDATION — FEBRUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 21-00121	02/01/2021	03/29/2031	TESTERAN	Texas Naturals TW, LLC	No
TMK 21-00122	02/01/2021	08/03/2026	COOKIES	Cookies SF LLC	No
TMK 21-00123	02/01/2021	01/10/2028	COOKIES	Cookies SF LLC	No
TMK 21-00124	02/01/2021	01/31/2028	COOKIES	Cookies SF	No
TMK 21-00125	02/01/2021	01/10/2028	C-Bite Logo & DESIGN	Cookies SF LLC	No
TMK 21-00126	02/01/2021	07/11/2030	BEOSOUND	BANG & OLUFSEN A/S	No
TMK 21-00127	02/01/2021	06/04/2025	BANG & OLUFSEN	BANG & OLUFSEN A/S	No
TMK 21-00128	02/01/2021	04/19/2031	SAFETY SABER	Keller Industries, LLC	No
TMK 21-00129	02/01/2021	05/28/2026	BANG & OLUFSEN	Bang & Olufsen A/S	No
TMK 21-00130	02/01/2021	06/25/2025	B & O (STYLIZED)	BANG & OLUFSEN A/S	No
TMK 21-00131	02/01/2021	09/20/2026	B&O (STYLIZED)	Bang & Olufsen A/S	No
TMK 21-00132	02/01/2021	07/21/2025	B&O PLAY & DESIGN	B&O PLAY A/S	No
TMK 21-00133	02/01/2021	06/04/2024	BEOPLAY	B&O play a/s	No
TMK 21-00134	02/01/2021	01/07/2024	LIGHTSABER	Lucas Entertainment Company	No
TMK 21-00135	02/01/2021	02/28/2028	WRENSILVA & Design	Wrensilva, LLC	No
TMK 21-00136	02/01/2021	05/16/2030	OEKO-TEX	ÖTT - Institut Für Ökologie	No
TMK 21-00137	02/01/2021	06/25/2023	GE MONOGRAM & Design	General Electric Company	No
TMK 21-00138	02/01/2021	03/08/2031	SYMPL	Sympl Supply Co.	No

CBP IPR RECORDATION — FEBRUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 21-00139	02/03/2021	01/28/2029	CHORE BOY & Design	The Spic and Span Company	No
TMK 21-00140	02/03/2021	01/28/2029	CHORE BOY & DESIGN	The Spic and Span Company	No
TMK 21-00141	02/03/2021	07/16/2026	S & W & DESIGN	DEL MONTE FOODS, INC.	No
TMK 21-00142	02/03/2021	02/02/2025	CHORE BOY	THE SPIC AND SPAN COMPANY	No
TMK 21-00143	02/03/2021	09/25/2022	DUREX	LRC PRODUCTS	No
TMK 21-00144	02/03/2021	05/16/2026	DUREX Logo & DESIGN	LRC Products	No
TMK 21-00145	02/03/2021	02/26/2030	DUREX in Oval & Design	LRC Products	No
TMK 21-00146	02/03/2021	06/10/2030	ALPHA COTTON	AAVN INC.	No
TMK 21-00147	02/03/2021	12/21/2030	STYLE SAVVY	Nintendo of America Inc.	No
TMK 21-00148	02/03/2021	12/08/2029	PLAY	LRC Products Limited	No
TMK 21-00149	02/05/2021	09/06/2030	POLIGRIP	BLOCK DRUG COMPANY, INC.	No
TMK 21-00150	02/09/2021	07/10/2028	WEST PAW	WEST PAW, INC.	No
TMK 21-00151	02/09/2021	02/10/2031	WEST PAW (STYLIZED)	WEST PAW, INC.	No
TMK 21-00152	02/09/2021	12/08/2029	PLAY	LRC Products	No
TMK 21-00153	02/09/2021	10/31/2028	WEST PAW	WEST PAW, INC.	No
TMK 21-00154	02/09/2021	09/09/2030	NILI LOTAN	Nili Lotan INDIVIDUAL	No
TMK 21-00155	02/09/2021	04/19/2031	AQL	George P. Kallas INDIVIDUAL	No
TMK 21-00156	02/09/2021	02/17/2031	WEST PAW	WEST PAW, INC.	No

CBP IPR RECORDATION — FEBRUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 21-00157	02/09/2021	10/09/2029	WEST PAW (STYLIZED)	WEST PAW, INC.	No
TMK 21-00158	02/09/2021	09/16/2030	JOHN DEERE	DEERE & COMPANY	No
TMK 21-00159	02/09/2021	02/24/2031	OMSTAR D-1280X	D-1280X, Inc. DBA Omstar Environmental Products	No
TMK 21-00160	02/09/2021	10/09/2029	PATRICIA NASH	Nash, Patricia Anderson	No
TMK 21-00161	02/09/2021	03/11/2028	PONY-O	RIOT ACCESSORIES LTD.	No
TMK 21-00162	02/09/2021	04/26/2031	MDI Microtech Defense Industries & DESIGN	Microtech Knives, Inc.	No
TMK 21-00163	02/09/2021	09/20/2027	M&H	M&H SPIRITS LLC	No
TMK 21-00164	02/09/2021	01/24/2031	NOVAFLEX	Z-FLEX (U.S.) INC.	No
TMK 21-00165	02/09/2021	11/04/2030	M & DESIGN	Marfione, Anthony L.	No
TMK 21-00166	02/12/2021	10/21/2030	OMSTAR DX1	D-1280X, Inc. DBA Omstar Environmental Products	No
TMK 21-00167	02/12/2021	11/04/2025	PLAY-FI	PHORUS, INC.	No
TMK 21-00168	02/12/2021	02/24/2031	START MY LEASE	START MY LEASE INC.	No
TMK 21-00169	02/12/2021	03/15/2031	NEW YORK KNITS & DESIGN	Shalom International Corp.	No
TMK 21-00170	02/12/2021	01/13/2031	RECOVERY IS ESSENTIAL	Stephani M. Register DBA Recovery Is Essential	No
TMK 21-00171	02/12/2021	05/09/2026	RUGER	Sturm, Ruger & Company, Inc.	No

CBP IPR RECORDATION — FEBRUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 21-00172	02/12/2021	04/19/2031	BEING ANDREW GREENE	Being Andrew Greene	No
TMK 21-00173	02/12/2021	06/03/2030	VAPORESSO	SHENZHEN SMOORE TECHNOLOGY LIMITED	No
TMK 21-00174	02/12/2021	01/20/2031	BV SCIENCE	BV Science, Inc.	No
TMK 21-00175	02/12/2021	06/10/2030	FEELM INSIDE & DESIGN	SHENZHEN SMOORE TECHNOLOGY LIMITED	No
TMK 21-00176	02/16/2021	02/24/2031	HDC	NOVAFLEX INDUSTRIES INC.	No
TMK 21-00177	02/17/2021	08/28/2023	HEL-STAR 6	CORE SURVIVAL INC.	No
TMK 21-00178	02/19/2021	10/03/2031	JANSSEN	Johnson & Johnson CORPORATION	No
TMK 21-00179	02/19/2021	07/17/2028	HEL-STAR	CORE SURVIVAL, INC.	No
TMK 21-00180	02/19/2021	09/26/2028	HEL-STAR EXO	CORE SURVIVAL, INC.	No
TMK 21-00181	02/19/2021	05/25/2027	GENOTROPIN	PFIZER HEALTH AB	No
TMK 21-00182	02/19/2021	03/04/2028	INLYTA	Pfizer Inc.	No
TMK 21-00183	02/19/2021	01/22/2024	MICRO SD HC & DESIGN	SD-3C, LLC	No
TMK 21-00184	02/19/2021	12/10/2023	SD XC (STYLIZED)	SD-3C, LLC	No
TMK 21-00185	02/19/2021	04/08/2029	LT500P	LG Electronics Inc.	No
TMK 21-00186	02/19/2021	04/08/2029	LT600P	LG Electronics Inc.	No
TMK 21-00187	02/19/2021	04/15/2029	LT700P	LG Electronics Inc.	No
TMK 21-00188	02/19/2021	04/15/2029	LT800P	LG Electronics Inc.	No

CBP IPR RECORDATION — FEBRUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 21-00189	02/19/2021	08/21/2029	LT1000P	LG Electronics Inc.	No
TMK 21-00190	02/19/2021	01/13/2031	BREEZE BLAST	Allstar Marketing Group, LLC	No
TMK 21-00191	02/19/2021	01/22/2024	MICRO SD XC (STYLIZED)	SD-3C, LLC	No
TMK 21-00192	02/19/2021	02/28/2028	STANDARD 100 and Design	Testex AG	No
TMK 21-00193	02/19/2021	07/09/2023	CONFIGURATION OF A BIRD KABOB	Wesco Pet, Inc.	No
TMK 21-00194	02/19/2021	08/12/2025	XTRFY	Built On Experience AB	No
TMK 21-00195	02/19/2021	03/22/2031	Rocks Design	Green Resources Consulting, LLC	No
TMK 21-00196	02/19/2021	01/21/2024	DEXAS	Dexas International, Ltd.	No
TMK 21-00197	02/19/2021	03/29/2031	WAD-FREEE	Brayniacs LLC	No
TMK 21-00198	02/19/2021	04/07/2030	BEETLE IN HEXAGON DESIGN	Kitanica LLC	No
TMK 21-00199	02/19/2021	03/25/2028	KITANICA	KITANICA, LLC	No
TMK 21-00200	02/19/2021	01/20/2031	BV Science & DESIGN	BV Science, Inc.	No
TMK 21-00201	02/19/2021	09/16/2030	GAMAXINE	BV Science, Inc.	No
TMK 21-00202	02/19/2021	07/28/2030	HERBANOPLEX CP	BV Science, Inc.	No
TMK 21-00203	02/19/2021	02/03/2031	STEPHEN STILLS	Stephen Arthur Stills INDIVIDUAL	No
TMK 21-00204	02/22/2021	02/24/2031	DYSANTIC	BV Science, Inc.	No
TMK 21-00205	02/22/2021	04/08/2029	CAFÉ DE LA FONDA	Hurtado-Gil, Wilson Alberto	No
TMK 21-00206	02/24/2021	07/25/2027	SIMPLETIRE.COM	Simple Tre LLC	No

CBP IPR RECORDATION — FEBRUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 21-00207	02/24/2021	08/23/2027	SIMPLETIRE & DESIGN	Simple Tire LLC	No
TMK 21-00208	02/24/2021	06/21/2027	SIMPLE TIRE	Simple Tire LLC	No
TMK 21-00209	02/24/2021	11/11/2030	CONVERSE	Simple Tire LLC	No
TMK 21-00210	02/24/2021	02/27/2022	NATURE'S BEAUTY	GARCOA, INC.	No
TMK 21-00211	02/24/2021	03/29/2031	CALMING HEAT	Allstar Marketing Group, LLC	No
TMK 21-00212	02/25/2021	12/22/2030	CALMING COMFORT	Allstar Marketing Group, LLC	No
TMK 21-00213	02/25/2021	03/17/2024	CAT'S MEOW	Allstar Marketing Group, LLC	No
TMK 21-00214	02/25/2021	02/10/2031	CATCHME KITTY	Allstar Marketing Group, LLC	No
TMK 21-00216	02/25/2021	05/05/2029	ICE GENIE	Allstar Marketing Group, LLC	No
TMK 21-00217	02/25/2021	03/20/2022	MAGIC MESH	Allstar Marketing Group, LLC	No
TMK 21-00218	02/25/2021	05/05/2029	OWN ZONE	Allstar Marketing Group, LLC	No
TMK 21-00219	02/25/2021	03/11/2029	PETI CARE	Allstar Marketing Group, LLC	No
TMK 21-00220	02/25/2021	01/27/2031	POP N' PLAY	Allstar Marketing Group, LLC	No
TMK 21-00221	02/25/2021	12/16/2024	PURRFECT ARCH	Allstar Marketing Group, LLC	No
TMK 21-00222	02/25/2021	07/15/2024	REHEATZA	Kanefsky, Joseph	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 — FEBRUARY 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
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

U.S. Court of Appeals for the Federal Circuit

HABAS SINAI VE TIBBI GAZLAR ISTIHSAL ENDUSTRISI A.S., Plaintiff-Appellant v. UNITED STATES, REBAR TRADE ACTION COALITION, Defendants-Appellees

Appeal No. 2020–1506

Appeal from the United States Court of International Trade in Nos. 1:17-cv-00202-LMG, 1:17-cv-00203-LMG, Senior Judge Leo M. Gordon.

Decided: March 30, 2021

DAVID L. SIMON, Law Offices of David L. Simon, Washington, DC, argued for plaintiff-appellant.

MARGARET JANTZEN, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellee United States. Also represented by JEFFREY B. CLARK, JEANNE DAVIDSON, LOREN MISHA PREHEIM; REZA KARAMLOO, Office of the Chief Counsel for Trade Enforcement & Compliance, United States Department of Commerce, Washington, DC.

JOHN R. SHANE, Wiley Rein, LLP, Washington, DC, argued for defendant-appellee Rebar Trade Action Coalition. Also represented by STEPHANIE MANAKER BELL, LAURA EL-SABAAWI, JEFFREY OWEN FRANK, CYNTHIA CRISTINA GALVEZ, ALAN H. PRICE, MAUREEN E. THORSON.

Before NEWMAN, REYNA, and STOLL, *Circuit Judges*.

REYNA, *Circuit Judge*.

Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. appeals the decision of the U.S. Court of International Trade that affirms the U.S. Department of Commerce’s final affirmative determination imposing a 14.01 percent countervailing duty on imports of certain steel concrete reinforcement bar from the Republic of Turkey. Because Habas has not shown that Commerce exceeded its statutory authority in the selection of the 14.01 countervailing duty rate, we affirm.

BACKGROUND

On September 20, 2016, the Rebar Trade Action Coalition (“Coalition”) submitted a petition to the U.S. Department of Commerce (“Commerce”) requesting the initiation of a countervailing duty (“CVD”) investigation on imports of certain reinforcement bar (“rebar”) imported from Turkey. *See Steel Concrete Reinforcing Bar From the Republic of Turkey: Initiation of Countervailing Duty Investigation*, 81 Fed. Reg. 71,705 (Oct. 18, 2016); J.A. 17. The Coalition alleged that the Turkish government provided countervailable subsi-

dies to Turkish companies that manufactured, produced, or exported rebar from Turkey to the United States, and that those subsidies were causing material injury to the United States rebar industry. *See* 81 Fed. Reg. at 71,705–06; J.A. 17–18.

On October 18, 2016, Commerce initiated a CVD investigation on U.S. imports of rebar from Turkey. *See* 81 Fed. Reg. at 71,705–09; J.A. 17–21. Commerce issued CVD questionnaires to the Turkish government and to Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. (“Habas”), the sole respondent subject to the investigation. The questionnaire broadly inquired about benefits the Turkish government extended to Habas during the period of investigation. *See* J.A. 22–36.

In its questionnaire response, Habas did not disclose that it received benefits via a duty drawback program implemented under Article 22 of Turkey’s Domestic Processing Regime (RDP) Resolution 2005/8391 (“duty drawback program”).¹ J.A. 6, 37–88. Under this duty drawback program, the Turkish government granted incentives, including “inward processing permits,” to Turkish manufacturers and exporters. J.A. 94. During Commerce’s verification of Habas’s questionnaire response, Habas revealed that it held a permit under the program and therefore occasionally benefitted from import duty drawbacks for billets and ferroalloys, raw materials used to make rebar. J.A. 94, 125, 129. Habas informed Commerce that it had no obligation to disclose the duty drawback program in its questionnaire response because Commerce had previously, in an investigation on circular welded carbon steel pipes and tubes from Turkey, determined that benefits under the duty drawback program were not countervailable. J.A. 129–30 (citing Circular Welded Carbon Steel Pipes and Tubes From Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2015, 82 Fed. Reg. 16,994 (Apr. 7, 2017)). Habas also asserted that the questionnaire did not specifically inquire about the program. J.A. 130.

On May 15, 2017, Commerce issued a final affirmative CVD determination. J.A. 123. Commerce imposed a CVD rate of 14.01 percent *ad valorem* on Habas’s imports of rebar from Turkey. J.A. 133. Commerce faulted Habas for not reporting benefits received from the duty drawback program. Specifically, Commerce found that Habas failed to cooperate with Commerce’s investigation, as required by 19 U.S.C. § 1677e(b), when it failed to timely report receipt of benefits under the duty drawback program. J.A. 125–33. Commerce determined that Habas’s failure to disclose that information impeded the CVD inves-

¹ Generally, a duty drawback is a rebate of import duties paid on imported goods (or components or raw materials) that are subsequently exported in whole or finished form. 19 U.S.C. § 1313.

tigation, including by preventing Commerce from issuing a supplemental questionnaire directed to whether the program constitutes a financial contribution conferring a benefit upon Habas, as required to establish a countervailable subsidy under 19 U.S.C. §§ 1677(5)(B), -(E). J.A. 132–33. Commerce determined that it was appropriate to draw an adverse inference that those requirements were met and to apply a CVD rate based on “facts otherwise available” under 19 U.S.C. § 1677e. J.A. 132–33.

Commerce used its established hierarchy as a guide to determine the applicable CVD rate based on facts otherwise available. 19 U.S.C. § 1677e(d)(1)(A); J.A. 133. Specifically, Commerce selected a CVD rate from the following order of preference: (1) the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program and the rate is not zero; (2) the highest non-*de minimis* rate calculated for the identical program in a countervailing duty proceeding involving the same country; (3) the highest non-*de minimis* rate for a similar program, based on treatment of the benefit, in another countervailing duty proceeding involving the same country; (4) the highest calculated subsidy rate for any program otherwise identified in a countervailing duty case involving the same country that could conceivably be used by the non-cooperating companies. J.A. 133.

Commerce found that the first two options in its hierarchy did not apply. Turning to the third option, Commerce selected a countervailing duty rate of 14.01 percent *ad valorem*, reasoning that it had applied that rate with respect to an export tax rebate program in a 1986 CVD investigation on “Welded Pipe and Tube from Turkey.” *Id.* & n.208 (citing Final Affirmative Countervailing Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products from Turkey, 51 Fed. Reg. 1268 (Jan. 10, 1986) [hereinafter *Welded Pipe and Tube*]). Commerce thus selected the 14.01 percent *ad valorem* rate as facts otherwise available on the basis that it was the highest rate for a similar program in a countervailing duty proceeding involving Turkey. J.A. 133.

Commerce is required under the statute to corroborate, “to the extent practicable,” any rate that it relies on as best information available. 19 U.S.C. § 1677e(c). Here, Commerce explained that the 14.01 percent rate was a rate established in the course of a prior CVD investigation that involved a tariff rebate program similar to the duty drawback program in the underlying investigation, from which it determined Habas had benefited. J.A. 133–34. On that basis, Commerce concluded that the 14.01 percent rate was both relevant and reliable. J.A. 134.

Habas appealed Commerce’s final affirmative determination to the Court of International Trade (“Trade Court”). *See Rebar Trade Action Coal. v. United States*, 389 F. Supp. 3d 1371 (Ct. Int’l Trade 2019). As relevant to this appeal, Habas argued that, even if Commerce was justified in using “facts otherwise available” to select a CVD rate, Commerce’s selection of the 14.01 percent rate was unreasonable because it was not adequately corroborated by the 1986 *Welded Pipe and Tube* investigation. *Id.* at 1379. The Trade Court rejected Habas’s argument, finding that it was Habas’s failure to timely disclose the duty drawback program from which it benefitted that led Commerce to apply facts otherwise available. *Id.* The Trade Court further reasoned that, because the statute requires that a rate selected from facts otherwise available must be “corroborated to the extent practicable,” Commerce has “broad discretion” to follow its established hierarchy and ultimately select a rate that had been applied for the same or similar program in a CVD program involving the same country. *Id.* Concluding that Commerce did not exceed its statutory discretion, the Trade Court affirmed Commerce’s final affirmative determination. *Id.* at 1379–80, 1384. Habas appealed. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(5).

STANDARD OF REVIEW

We review Trade Court decisions involving Commerce countervailing duty determinations on a de novo basis. In doing so, we apply the same standard of review applied by Trade Court in its review of Commerce’s CVD investigations. *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340 (Fed. Cir. 2011). Under the applicable standard, we will uphold a Commerce determination unless it is unsupported by substantial evidence on the record, or is otherwise not in accordance with law. *Id.*; 19 U.S.C. § 1516a(b)(1)(B)(i).

DISCUSSION

Generally, countervailing duty investigations are undertaken by Commerce to determine whether a foreign government has conferred to its producers benefits that are deemed to be countervailable subsidies. *See* 19 U.S.C. §§ 1671, 1677. A countervailable subsidy is defined to include certain types of financial assistance provided by a foreign government or entity that confers a “benefit” to the recipient relating to its production, manufacture, or export of the subject goods. *See* 19 U.S.C. §§ 1677(5), 1677(5A); *POSCO v. United States*, 977 F.3d 1369, 1371 (Fed. Cir. 2020).

A foreign producer subject to a countervailing duty investigation, i.e., a respondent, must comply, to the best of its ability, with Com-

merce's requests for information. *See* 19 U.S.C. § 1677e(b). Relevant to this appeal, a respondent must “put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.” *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). If the interested party withholds information sought by Commerce, then Commerce may draw an adverse inference from the party's failure to comply. 19 U.S.C. § 1677e(a)–(b). The risk of an adverse inference is intended to incentivize cooperation with Commerce's investigations. *See Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1348 (Fed. Cir. 2016) (“Commerce's consideration of the deterrent effect of its determination reflects the law's expectation.”); *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012); *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000); Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“SAA”), H.R. REP. NO. 103–316, vol. 1, at 870, *as reprinted in* 1994 U.S.C.C.A.N. 4040, 4199.

Commerce may use an adverse inference “in selecting from among the facts otherwise available.” 19 U.S.C. § 1677e(b)(1). Potential sources of information for adverse inferences include the petition, the final determination in the investigation, any previous administrative review, or any other information placed on the record. *See id.* § 1677e(b)(2); 19 C.F.R. § 351.308(c). To the extent Commerce relies on information outside what it obtained during its investigation, Commerce must, “to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.” 19 U.S.C. § 1677e(c)(1).

In a case where Commerce has drawn an adverse inference, Commerce may

- (i) use a countervailable subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country; or
- (ii) if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use.

19 U.S.C. § 1677e(d)(1)(A). Commerce has discretion, in such cases, to apply any rate falling into these categories, “including the highest such rate,” as appropriate depending on the facts that gave rise to the

adverse inference. *Id.* § 1677e(d)(2). Commerce is not required to select a rate that reflects the investigated party's commercial reality, nor must Commerce estimate the rate that would have applied had the investigated party cooperated. *Id.* § 1677e(d)(3).

Against this backdrop, we turn to Habas's arguments on appeal. Habas "only appeals Commerce's selection of [the 14.01 percent rate]," and explains that the "gravamen" of its arguments on appeal is that Commerce erred in adopting the 14.01 percent rate because it is not an adequately corroborated rate. Appellant's Br. 8. According to Habas, the drawback program investigated in *Welded Pipe and Tube* was in effect over thirty years ago and was terminated in 1987, making any relationship between the 1986 program and modern economic conditions too tenuous, and the 14.01 percent rate too stale, to meet the corroboration requirement. *Id.* at 8–9. In other words, Habas argues that Commerce should be permitted to apply Turkey's tax rebate programs only to the extent it determines they "could conceivably have benefitted Habas in 2015." *Id.* at 22. Habas argues that a thirty-five-year-old rate cannot be deemed "corroborated" under the statute, and that the CVD determination is therefore not supported by substantial evidence and is otherwise contrary to law. We disagree.

Habas overlooks the context of Commerce's analysis, which is that Commerce resorted to facts otherwise available because Habas, as it concedes, failed to disclose the duty drawback program from which it benefitted. When an interested party withholds requested information in a CVD investigation, as Habas did here, Commerce has statutory latitude to draw adverse inferences concerning the withheld information and resort to "facts otherwise available" to select a countervailing duty rate. *See* 19 U.S.C. § 1677e. Habas does not explain how Commerce exceeded that statutory authority in this case. Nor does Habas challenge as contrary to law Commerce's established hierarchy for selecting a countervailing duty rate based on "facts otherwise available."

If accepted, Habas's arguments would have this court impose on Commerce an obligation that is not supported by the statute, namely to use only "facts otherwise available" that reflect the commercial reality of the affected party or that bends to the benefit of the affected party. *See* 19 U.S.C. § 1677e(d)(3). Such a requirement would be impossible to apply where the respondent cannot or refuses to provide the very required information intended to inform Commerce of a respondent's commercial reality in the context of a CVD investigation, including that it has benefitted from a countervailable subsidy.

Even accepting Habas's argument that the *Welded Pipe and Tube* determination is now "stale" and unrelated to present commercial realities, this does not necessarily mean that Commerce's selection of the 14.01 percent rate was contrary to law. Once a party withholds information requested by Commerce, it invites Commerce to rely on information that is not limited to the information obtained in the course of the investigation. The statute requires Commerce to corroborate secondary information not perfectly, but "to the extent practicable." *See id.* § 1677e(c)(1). Habas has not shown that Commerce acted contrary to that statutory requirement.

Commerce's use of the 14.01 percent rate is consistent with the overall statutory regime. Congress explained, when discussing the legislative purpose of § 1677e, that Commerce "may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *Nan Ya Plastics*, 810 F.3d at 1348 (quoting SAA, 1994 U.S.C.C.A.N. 4040, 4199). In light of Congress's desire that Commerce guard against incentivizing non-cooperation with Commerce's investigations, Commerce was justified in selecting a rate that, in its considered discretion, would deter future non-cooperation and avoid rewarding Habas (and other would-be respondents) for further non-cooperation by promoting a rate lower than it would have received had it disclosed the duty drawback program. Although the origin of 14.01 percent rate may relate to a CVD determination from decades ago, Habas does not address why the rate unreasonably departs from § 1677e. Absent such a showing, and based on the record before us, we conclude that Commerce's selection of the 14.01 percent CVD rate is not contrary to law and is supported by substantial evidence. We therefore affirm the Trade Court's decision sustaining Commerce's determination.

CONCLUSION

We have considered the parties' remaining arguments and find them unpersuasive. For the reasons set forth above, the Trade Court's decision is affirmed.

AFFIRMED

U.S. Court of International Trade

Slip Op. 21–30

NEW AMERICAN KEG, d/b/a AMERICAN KEG COMPANY, Plaintiff, v. UNITED STATES, Defendant, and NINGBO MASTER INTERNATIONAL TRADE CO., LTD., AND GUANGZHOU JINGYE MACHINERY Co, LTD, Defendant-Intervenors.

Before: M. Miller Baker, Judge
Court No. 20–00008

[Plaintiff's motion for judgment on the agency record is granted in part and denied in part.]

Dated: March 23, 2021

Whitney M. Rolig, Andrew W. Kentz, and Nathaniel Maandig Rickard, Picard Kentz & Rowe LLP of Washington, DC, on the briefs for Plaintiff.

Ashley Akers, Trial Attorney, Commercial Litigation Branch, *Ethan P. Davis*, Acting Assistant Attorney General, *Jeanne P. Davidson*, Director, and *Patricia M. McCarthy*, Assistant Director, Civil Division, U.S. Department of Justice of Washington, DC, on the brief for Defendant. Of counsel on the brief was *Vania Wang*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce of Washington, DC.

Gregory S. Menegaz, J. Kevin Horgan, and Alexandra H. Salzman, deKieffer & Horgan, PLLC, of Washington, DC, on the brief for Defendant-Intervenors.

OPINION AND ORDER

Baker, Judge:

Last week, the nation and much of the world celebrated St. Patrick's Day. Some of those celebrations involved green beer, often tapped from steel kegs. This case is about steel kegs (but without the green beer).

After an investigation, the Commerce Department recently determined that imported Chinese beer kegs were being dumped in the U.S., i.e., sold within the U.S. at below what would be the normal sales price if China had a market economy. Based on that determination, Commerce imposed a hefty antidumping duty on Chinese kegs in general but exempted one major Chinese exporter that was individually investigated and two smaller exporters.

As to the major exporter that Commerce investigated, a domestic keg manufacturer objected that the Department's errors in calculating labor costs and verifying information allowed the exporter to escape antidumping duties. As to the two smaller exporters, the domestic manufacturer objected to Commerce's determination that

they were free from Chinese government control and therefore could enjoy whatever antidumping rate Commerce assigned to the investigated major exporter.

Commerce denied those objections. The domestic manufacturer then brought this action challenging Commerce's decision, prompting the investigated Chinese exporter and one of the smaller exporters to intervene as defendants. After full briefing on the domestic manufacturer's motion for judgment on the agency record, the Court now grants the motion as to the investigated exporter's labor costs and verification issues. As to the issue of the two smaller exporters' eligibility for a separate rate, the Court grants the domestic manufacturer's motion as to one but denies it as to the other. Finally, the Court remands for further proceedings consistent with this opinion.

Statutory and Regulatory Background

A. Antidumping orders generally

1. Commerce and ITC investigations

The federal antidumping statute provides a mechanism for imposing remedial duties on merchandise sold, or likely to be sold, in the United States at "less than its fair value." 19 U.S.C. § 1673(1). That mechanism allows an "interested party," as defined in the Tariff Act of 1930,¹ to file a petition with Commerce and the International Trade Commission alleging that a U.S. domestic industry is materially injured or threatened with material injury by imports that are being, or are likely to be, sold in the U.S. at less than fair value. U.S. Int'l Trade Comm'n, Publication 4540, *Antidumping and Countervailing Duty Handbook* at I-3 (14th ed. June 2015), available at https://www.usitc.gov/trade_remedy/documents/handbook.pdf (accessed Mar. 22, 2021).

Commerce then investigates whether the petition contains sufficient allegations of dumping and, if so, whether dumping is occurring, while the ITC investigates whether the relevant domestic industry is being, or is likely to be, materially injured. If both agencies find in the affirmative, Commerce publishes an antidumping order in the Federal Register imposing an antidumping duty "in an amount equal to the amount by which the normal value exceeds the export price (or

¹ The statute provides that an "interested party" described in subparagraph (C), (D), (E), (F), or (G) of Section 771(9) of that Act (codified at 19 U.S.C. § 1677(9)) may file a petition on behalf of a domestic industry. See 19 U.S.C. § 1673a(b)(1). The specified subparagraphs refer to various domestic entities involved in the production of a "domestic like product." *Id.* § 1677(9)(C)–(G).

the constructed export price) for the merchandise.” 19 U.S.C. § 1673.² The antidumping duty is in addition to any other duty imposed on the subject merchandise. *Id.*

2. Selection of respondents

In theory, the goal of an antidumping investigation is to determine the extent to which every individual foreign exporter’s U.S. selling price for the subject merchandise is lower than its “normal value,” as required by statute: “In determining weighted average dumping margins . . . , [Commerce] shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise.” 19 U.S.C. § 1677f-1(c)(1). The goal is theoretical because the statute then sets forth an exception to the general rule when there are numerous exporters.

For such cases where “it is not practicable to make individual weighted average dumping margin determinations . . . because of the large number of exporters or producers involved in the investigation,” Commerce may determine margins “for a reasonable number of exporters or producers” by limiting its investigation to either a statistically valid sample of exporters or producers or “exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.” *Id.* § 1677f-1(c)(2).

When Commerce invokes the statutory exception, it selects “mandatory respondents” for individual examination. As the term implies, mandatory respondents are required to respond to Commerce’s information requests during an investigation. Commerce determines individual antidumping rates for the mandatory respondents, 19 U.S.C. § 1673d(c)(1)(B)(i)(I).³

3. Verification

A critical aspect of Commerce’s antidumping investigation involves “verification” of mandatory respondents. The statute provides that Commerce “shall verify all information relied upon in making . . . a final determination in an investigation.” 19 U.S.C. § 1677m(i)(1). Commerce’s implementing regulations provide that the Department

² “Normal value” essentially refers to the price at which the subject merchandise is sold in the country from which it is exported. *RHP Bearings Ltd. v. United States*, 288 F.3d 1334, 1337 (Fed. Cir. 2002). For example, the normal value of a widget exported from Country Q is the price at which that widget is sold in Country Q.

³ As to exporters and producers *not* individually investigated, Commerce determines an “all-others rate” to apply. See 19 U.S.C. § 1673d(c)(1)(B)(i)(II). The “all-others rate” is to be “an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated,” *id.* § 1673d(c)(5)(A), subject to certain exceptions not relevant here.

will visit (1) producers, exporters, or importers; (2) their affiliates; or (3) unaffiliated purchasers “in order to verify the accuracy and completeness of submitted factual information” and that the personnel making such visits “will request access to all files, records, and personnel which the Secretary considers relevant to factual information submitted.” 19 C.F.R. § 351.307(d)(1)–(3).

“Verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness.” *Bomont Indus. v. United States*, 733 F. Supp. 1507, 1508 (CIT 1990) (cleaned up). Commerce has latitude in how it conducts verification, and there is no requirement to verify all information submitted by a respondent. *U.S. Steel Corp. v. United States*, 953 F. Supp. 2d 1332, 1348 (CIT 2013).

B. Antidumping investigations involving non-market economies

When, as here, an antidumping investigation involves products produced in a non-market economy,⁴ the statutory and regulatory scheme requires Commerce to undertake additional areas of inquiry. Two such inquiries relevant here are whether an exporter is subject to a general rate applicable to the country and determining what the “normal” price for the product in question would be if the country had a market economy.

1. “Separate rate” versus “country-wide rate” in non-market economies

In general, when Commerce makes an affirmative determination that dumped goods are coming from a non-market economy country, Commerce applies a rebuttable presumption that every exporter or producer within that country is government-controlled and is therefore subject to a single country-wide dumping margin. *See* 19 C.F.R. § 351.107(d); *see also Changzhou Haud Flooring Co. v. United States*, 947 F.3d 781, 792 (Fed. Cir. 2020).

Because the presumption is rebuttable, a company may ask Commerce to apply a separate rate if the company demonstrates “sufficient independence from state control.” *Changzhou Wujin Fine Chem. Factory Co. v. United States*, 701 F.3d 1367, 1370 (Fed. Cir. 2012). A successful separate rate applicant thus escapes the country-wide antidumping rate.

⁴ A “non-market economy” is defined as “any foreign country that [Commerce] determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.” 19 U.S.C. § 1677(18)(A).

The company seeking the separate rate must “affirmatively demonstrate” its independence. *Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (Fed. Cir. 1997). To that end, Commerce requires exporters or producers who wish to receive a separate rate to submit a “separate rate application” “and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.” ECF 28, at 621.⁵

As Commerce explained in its final decision here, if the Department determines that a company from a nonmarket economy is independent from government control, the Department will assign an antidumping rate based on its investigation of the company rather than apply the country-wide rate. *See* ECF 17–5, at 4. If Commerce does not investigate a company that is otherwise eligible for a separate rate, then the Department will generally assign an antidumping rate based on the average rate of companies so investigated. *Id.*⁶

2. Valuing “factors of production” in investigations involving non-market economies

As noted above, the antidumping statute requires that Commerce determine the subject merchandise’s “normal value” and then compare that value to the export price or constructed export price. 19 U.S.C. § 1677b(a). When goods subject to antidumping investigation are produced in a country with a non-market economy, the statute requires Commerce to assume that home-market sales are not reliable indicators of normal value because the economy is presumed to be under state control. *Taian Ziyang Food Co. v. United States*, 637 F. Supp. 2d 1093, 1105 (CIT 2009).

For merchandise imported from a country deemed to have a non-market economy, the statute requires Commerce to

determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses. . . . [T]he valuation of the factors of production shall be based on the best available information

⁵ In this opinion, pagination references in citations to the Court record are to the pagination found in the ECF header at the top of each page.

⁶ Essentially, the “separate rate” applied to eligible producers and exporters from non-market economy countries is analogous to the “all-others rate” applied to non-investigated companies from market economy countries. *See Changzhou Hawd Flooring Co. v. United States*, 848 F.3d 1006, 1011 (Fed. Cir. 2017) (noting that Commerce applies the statutory mechanism for determining the “all-others rate” of noninvestigated entities from market economy countries to determine the “separate rate” for eligible entities from non-market economy countries); *see also above* note 3.

regarding the values of such factors in a market economy country or countries considered to be appropriate by [Commerce].

19 U.S.C. § 1677b(c)(1).

“Factors of production” is a term of art for the different things that go into manufacturing a product, such as raw materials, electricity, and labor. All these things cost money, so theoretically the product’s price should reflect these costs. The statute requires Commerce to determine what the producer would have spent to prepare the subject merchandise if the country of origin had a market economy rather than a non-market economy. See *Lasko Metal Prods., Inc. v. United States*, 810 F. Supp. 314, 316–17 (CIT 1992) (“With respect to [non-market economy] goods, the statute’s goal is to determine what the cost of producing such goods would be in a market economy.”), *aff’d*, 43 F.3d 1442 (Fed. Cir. 1994); see also *Baoding Yude Chem. Indus. Co. v. United States*, 170 F. Supp. 2d 1335, 1345 (CIT 2001) (explaining that the task is not to construct the cost of producing the subject merchandise in a particular market economy, but rather to use data from comparable market-economy countries to construct what the cost of production would have been in the actual country of origin if it were a market economy country).

The statute requires that, in making the valuation described above, Commerce “shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.” 19 U.S.C. § 1677b(c)(4).

The market economy country, or countries, from which Commerce uses data to value the factors of production is known as the “surrogate country.” Commerce’s administrative regulations provide further guidance as to how Commerce selects the “surrogate country” for such valuations. “In determining whether a country is at a level of economic development comparable to the nonmarket economy . . . , the Secretary will place primary emphasis on *per capita* GDP as the measure of economic comparability.” 19 C.F.R. § 351.408(b). In addition, “the Secretary normally will value all factors in a single surrogate country.” *Id.* § 351.408(c)(2).⁷ Based on that preference for a

⁷ This provision contains an exception for labor, which it states is to be valued according to 19 C.F.R. § 351.408(c)(3). However, despite its continued inclusion in the Code of Federal Regulations, § 351.408(c)(3) was invalidated in 2010, *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010), and no party has argued that Commerce should have applied it in this case. Instead, since 2011, Commerce typically values non-market economy respondents’ labor rates “using industry-specific labor costs prevailing in the primary surrogate

single surrogate country, when available data come from several countries that are both at a level of economic development comparable to the nonmarket economy country and significant producers of comparable merchandise, Commerce examines all those countries' data to determine which set it deems best and then selects that country as the primary surrogate country. *Jiaxing Bro. Fastener Co. v. United States*, 822 F.3d 1289, 1294 (Fed. Cir. 2016).

Factual and Procedural Background

A. Commerce's investigation and assessment of duties

This case stems from an antidumping investigation that Commerce undertook at the request of New American Keg, which does business under the name American Keg Company and is the plaintiff in this case. American Keg describes itself as the sole U.S. producer of refillable stainless steel kegs and claims that by 2018, it faced imminent closure due to foreign competition. ECF 21, at 12. American Keg contends that unfairly traded imports were a major cause of its struggles and, accordingly, in 2018 the company filed antidumping duty petitions against kegs from China, Germany, and Mexico. *Id.* This case involves the kegs imported from China.

In response to American Keg's petitions, Commerce commenced an antidumping investigation covering the period from January 1, 2018, through June 30, 2018. *Refillable Stainless Steel Kegs from the People's Republic of China, the Federal Republic of Germany, and Mexico: Initiation of Less-Than-Fair-Value Investigations*, 83 Fed. Reg. 52,195 (Dep't Commerce Oct. 16, 2018).

Commerce selected Ningbo Master International Trade Co., Ltd. ("Ningbo Master"), as one of two mandatory respondents. *Id.* at 50–54.⁸ Ningbo Master filed its own separate rate application,⁹ as did (as relevant here) two other Chinese keg exporters—Guangzhou Jingye Machinery Co., Ltd. ("Jingye"), and Guangzhou Ulix Industrial & Trading Co, Ltd. ("Ulix"). *Id.* at 612, 621–24.

Commerce preliminarily determined that Chinese kegs were being, or were likely to be, dumped in the United States. *Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary*

country." *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 Fed. Reg. 36,092, 36,094 (Dep't Commerce June 21, 2011).

⁸ The other entity selected as a mandatory respondent declined to participate in Commerce's investigation, thus leaving Ningbo Master as the sole mandatory respondent.

⁹ Ningbo Master filed its own separate rate application because even though it was a mandatory respondent, it was subject to the China-wide rate unless it demonstrated its independence from the Chinese government.

Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures, 84 Fed. Reg. 25,745, 25,745–46 (Dep’t Commerce June 4, 2019). In so doing, Commerce preliminarily set a hefty China-wide rate of 79.71 percent. *Id.*

Commerce also preliminarily found that Ningbo Master, Jingye, and Ulix were entitled to separate rate status, thus sparing them from the hefty China-wide rate. ECF 28, at 622–24. Based on its investigation of Ningbo Master, Commerce preliminarily set its rate at 2.01 percent. *Id.* at 624. And because Ningbo Master was the only mandatory respondent that cooperated with the investigation, Commerce preliminarily set separate rates for Jingye and Ulix (which were not investigated) using Ningbo Master’s 2.01 percent rate. *Id.*

Subsequently, Commerce conducted verification in China, where Ningbo Master presented information it characterized as “minor corrections” to its prior submissions. ECF 21, at 15; ECF 23, at 13–14. Commerce accepted that information, but as discussed below, the parties disagree over whether Commerce properly verified it.

Following verification, Commerce confirmed its preliminary decision that steel kegs imported from China were being, or were likely to be, sold in the United States at less than fair value. *Refillable Stainless Steel Kegs from the People’s Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value* (Oct. 17, 2019), ECF 17–5, at 1.¹⁰ This final decision set the China-wide antidumping rate at 77.13 percent. ECF 17–5, at 4. The validity of this China-wide rate is not challenged here.

Commerce’s final decision also reaffirmed its preliminary decision that Ningbo Master, Jingye, and Ulix were entitled to separate rate status. *Id.* at 3. But in a change from its preliminary decision, Commerce also reduced Ningbo Master’s rate to zero. *Id.* at 4. The latter determination had the ripple effect of reducing the rate for the successful separate rate applicants Jingye and Ulix to zero as well. *Id.*

In the meantime, the ITC concurrently found “that the establishment of an industry in the United States is materially retarded . . . by reason of imports of refillable stainless steel kegs from . . . China.” *Refillable Stainless Steel Kegs from the Federal Republic of Germany and the People’s Republic of China: Antidumping Duty Orders*, 84 Fed. Reg. 68,405, 68,405–06 (Dep’t Commerce Dec. 16, 2019). Commerce accordingly imposed antidumping duties consistent with the

¹⁰ The results of this final decision were published in the Federal Register. See *Refillable Stainless Steel Kegs from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 84 Fed. Reg. 57,010, 57,010 (Dep’t Commerce Oct. 24, 2019).

values set forth in the October 2019 final decision. *Id.* at 68,407; *see also* 84 Fed. Reg. at 57,011.

B. This litigation

American Keg’s complaint alleges that it is a domestic manufacturer and producer of “a domestic like product” to that which was the subject of Commerce’s final decision, ECF 8, at 2, and asserts seven counts for relief under 19 U.S.C. § 1516a(a)(2)(B)(i) challenging certain aspects of that decision.¹¹ American Keg asks the Court to “[h]old that the portions of Commerce’s Final Determination described herein are not supported by substantial evidence on the record and are otherwise not in accordance with law,” ECF 8, at 14, and to remand the matter to Commerce for further proceedings, *id.*

Ningbo Master and Jingye intervened as a matter of right to defend Commerce’s decision. ECF 16. American Keg thereafter filed the pending Rule 56.2 motion for judgment on the agency record. ECF 21; *see also* USCIT R. 56.2. The government (ECF 23) and the intervenors (ECF 25) oppose. As no party has requested oral argument, the Court decides the motion on the papers.

Jurisdiction and Standard of Review

The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1581(c).

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

Substantial evidence has been defined as more than a mere scintilla, as such relevant evidence as a reasonable mind might

¹¹ Count I alleges that Commerce’s decision to rely on Malaysian data as surrogate values for labor costs in calculating Ningbo Master’s rate was not supported by substantial evidence or otherwise not in accordance with law due to data reflecting forced labor in Malaysia. ECF 8, at 9 ¶ 37. Count II alleges that Commerce should not have accepted nor relied on Ningbo Master’s “minor corrections” submitted at verification because they resulted in a *de minimis* dumping margin. *Id.* at 10 ¶¶ 39–40. Counts III and IV are not relevant here as American Keg has opted to drop them. *See* ECF 31, at 2 (“Plaintiff has chosen not to pursue or seek judgment with respect to Counts III and IV . . .”). Count V contends that Commerce’s decision to grant separate rate status to Jingye was incorrect because Jingye failed to rebut the presumption of government control. ECF 8, at 12 ¶¶ 48–49. Count VI makes a similar allegation as to Ulix. *Id.* at 12 ¶¶ 51–52. Finally, Count VII asserts that to the extent Commerce erred in calculating Ningbo Master’s rate as alleged in Counts I and II, Commerce also erred in applying that rate to Jingye and Ulix insofar as they are eligible for separate rate status. *Id.* at 13 ¶ 54.

accept as adequate to support a conclusion. To determine if substantial evidence exists, we review the record as a whole, including evidence that supports as well as evidence that fairly detracts from the substantiality of the evidence.

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

Questions involving the verification procedures Commerce employs are reviewed for an abuse of discretion. *Micron Tech., Inc. v. United States*, 117 F.3d 1386, 1396 (Fed. Cir. 1997).

Discussion

American Keg's motion for judgment on the agency record in effect presents three principal issues: (1) whether substantial evidence supports Commerce's use of Malaysian labor data as a surrogate for Ningbo Master's labor costs in the face of record evidence of forced labor in Malaysia; (2) whether substantial evidence supports Commerce's verification of Ningbo Master's corrections; and (3) whether substantial evidence supports Commerce's grant of separate rate status to Jingye and Ulix. The Court addresses these issues in turn.

I. Labor surrogate value¹²

In view of China's status as a non-market economy country,¹³ the statute required Commerce to assess the "factors of production" used in producing kegs to determine their "normal value," and further required that the Department base that valuation "on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by [Commerce]." 19 U.S.C. § 1677b(c)(1). As one of the factors of production is labor costs, Commerce had to determine which country with a market economy could function as a surrogate for determining Ningbo Master's labor costs in China.

A. Commerce's findings

In this case, consistent with the statutory requirements, Commerce identified Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia "as countries that are at the same level of economic development

¹² This discussion corresponds to Commerce's findings in ECF 17–5, at 7–12.

¹³ Commerce previously deemed China as a non-market economy country and reaffirmed that position in 2017. See ECF 28, at 616 (citing *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 Fed. Reg. 50,858, 50,861 (Dep't Commerce Nov. 2, 2017)).

as China” and sought comments from interested parties. ECF 28, at 617. Both American Keg and Ningbo Master recommended Malaysia as the primary surrogate country for this investigation. *Id.*

Nevertheless, American Keg objected to using Malaysia as the *sole* surrogate country, arguing that Malaysian labor data are “unreliable and aberrational” because they reflect “child and forced labor practices.” *Id.* at 620. American Keg instead argued that Commerce should have relied on labor data from Brazil. ECF 17–5, at 7. In its final decision, Commerce rejected American Keg’s position and found “that there is insufficient evidence on the record to find that the Malaysia labor rate is aberrational or unreliable such that we should reject it in favor of other labor rate information on the record.” *Id.* at 9.

Commerce explained that the Department considers the “quality, specificity, and contemporaneity of the [surrogate value] data” and “prefer[s] to value all [factors of production] based on data from the primary surrogate country.” *Id.* Commerce stated that the record reflected labor surrogate values from three countries—Malaysia, Mexico, and Brazil. The Mexican value was specific to “[m]anufacture of thick gauge metal tanks,” but Commerce rejected it for this case because it was from two years prior to the relevant period of review and came from a source Commerce had previously deemed problematic. *Id.* at 9–10. It appears no party objects to that decision. That left the Malaysian and Brazilian labor data for consideration.

Commerce found that both the Malaysian and Brazilian labor data related generically to “manufacturing” and further found that the Malaysian data were contemporaneous with the period of investigation while the Brazilian data—like the Mexican data—were from two years earlier. *Id.* at 9. “Thus, the only reason we might select the Brazil [surrogate value] over the Malaysia [surrogate value] is if record evidence demonstrates that the Malaysia [surrogate value] is aberrational, distorted, or unreliable.” *Id.* at 10.

American Keg argued that the evidence demonstrated that the Malaysian data were aberrational, contending that evidence of forced labor within the Malaysian industry’s electrical and electronics sector should be extrapolated to Malaysian manufacturing as a whole. *Id.* Commerce, in response, found that “the record is not clear regarding the extent to which forced labor is a factor in Malaysia’s manufacturing sector.” *Id.*

Commerce ultimately decided to use the Malaysian labor data to value factors of production “because it is from the primary surrogate country, is contemporaneous with the [period of investigation], and the record does not indicate that the Brazil [surrogate value] is the

best information available when compared to the Malaysia [surrogate value] due to the presence of forced labor in one subsector of Malaysia's manufacturing sector." *Id.* at 12.

B. Analysis

American Keg cites four reports it characterizes as demonstrating that "forced labor is widespread throughout Malaysia's [electrical and electronics] sector and distorts sector wages" and that "the [electrical and electronics] sector comprises such a significant portion of Malaysia's overall manufacturing sector that these labor abuses render the wage rate for overall manufacturing aberrational and unreliable." ECF 21, at 26. American Keg further argues that Commerce "did not seriously engage" with this evidence, and that the Court must remand to require the agency to do so. *Id.* at 27.

The Court considers in turn each of the three bases upon which Commerce rejected American Keg's argument that the Malaysian labor data are unreliable. *First*, Commerce found that the administrative record did not "demonstrate how pervasive forced labor may be" in Malaysia's electrical and electronics industry. ECF 17-5, at 11. *Second*, it appears that Commerce doubted whether the record supported American Keg's contention that Malaysia's electrical and electronics industry "accounts for a significant part of Malaysia's manufacturing sector." *Id.* at 11. *Finally*, in what amounts to an alternative ground, Commerce concluded that even if forced labor is as pervasive in the Malaysian electrical and electronics industry as American Keg contends, and even if the workforce in that industry comprises one-third of Malaysia's total manufacturing workforce as American Keg also contends, it would simply indicate that forced labor implicates less than ten percent of the Malaysian manufacturing work, and that such a figure would not render the Malaysian surrogate value unreliable. *Id.*

1. What does the record demonstrate regarding the extent of forced labor in Malaysia's electrical and electronics industry?

American Keg's evidence of forced labor in the Malaysian electrical and electronics industry consisted of a report by a private entity, Verité, as well as three governmental reports. Commerce first addressed the Verité report, *see* ECF 17-5, at 10-11, and then addressed the three governmental reports as a group, *id.* at 11.

a. The Verité report

Verité describes itself as "a global [non-governmental organization] with a mission to ensure that people around the world work under

safe, fair, and legal conditions.” ECF 28, at 243. In 2014, it issued a highly-detailed 245-page report funded by the U.S. Labor Department entitled “Forced Labor in the Production of Electronic Goods in Malaysia: A Comprehensive Study of Scope and Characteristics.” See *id.* at 242–44.¹⁴

For this report, Verité’s researchers conducted a combination of desk and field research, including interviewing 501 electronics workers. *Id.* at 250. In interpreting the data collected, Verité followed the International Labor Organization’s survey guidelines to estimate forced labor. *Id.* In applying those guidelines, Verité stated that it “erred consistently on the side of caution, choosing to define forced labor narrowly to ensure that the positive findings were always based on solid, unambiguous evidence.” *Id.* Verité further explained its methodology and external constraints on its research as follows:

- Verité used “purposive targeted sampling to achieve a nonprobability sample that reflected the population of electronics workers as accurately as possible” and it “is confident in the robustness of the data presented, but including more participants would no doubt have made the research even stronger.” *Id.* at 314.
- Verité’s researchers were hampered by a “climate of pervasive surveillance” that discouraged workers from speaking with Verité researchers, and the Verité team members themselves “were frequently subject to the same modes of surveillance and threats of detention and deportation as the workers they sought to interview.” *Id.* at 313.
- “Because it is likely that workers with the greatest vulnerability to exploitation and/or forced labor were also likely to have been especially cautious about participating in the research, Verité’s positive findings of forced labor and forced labor indicators among those participants are probably low estimates.” *Id.* at 314.

The report further stated that due to this cautious methodology and the surveillance and threats that obstructed researchers’ work, “the

¹⁴ Verité used the International Labor Organization definition of forced labor:

[W]ork for which a person has not offered himself or herself voluntarily . . . and which is performed under the menace of any penalty . . . applied by an employer or third party to the worker. The coercion may take place during the worker’s recruitment process to force him or her to accept the job, or, once the person is working, to force him/her to do tasks which were not part of what was agreed at recruitment or to prevent him/her from leaving the job.

ECF 28, at 317.

positive findings of forced labor reported below are likely lower than the actual rates of forced labor in the Malaysian electronics industry and should be viewed as a minimum estimate.” *Id.*

The report’s principal findings included the following:

- “Forced labor is present in the Malaysian electronics industry” and can be characterized “as widespread.” *Id.* at 251.
- “[F]orced labor in the sector is strongly associated with the plight of foreign workers.” *Id.* at 421.
- Twenty-eight percent of *all* workers—a “minimum estimate” based on conservative criteria—in the study sample were found to be in situations of forced labor. *Id.* at 251.
- “Forced labor is linked to recruitment fee charging and the indebtedness that follows.” *Id.* Such fees were “often excessive” and “pervasive” in the context of foreign workers. *Id.*
- “Recruitment-related debt compelled workers to work.” *Id.* at 252.
- “Forced labor is also linked to deceptive recruitment.” Twenty-two percent of foreign workers were misled about the terms and conditions of their employment, and these workers “had little ability to change or refuse their jobs upon arrival.” *Id.*
- Passport retention “was widely experienced” by foreign workers and constrained “their freedom of movement.” *Id.*
- When the study’s definition of passport retention was broadened beyond the narrow International Labor Organization definition, “the aggregate forced labor finding rose appreciably: Fifty-eight percent of all respondents, or 66% of all foreign workers, were found to be in forced labor.” *Id.* at 255.
- It was difficult for foreign workers to leave before the end of their work contracts. *Id.* at 253.
- “Vulnerability to forced labor is a prominent feature of the Malaysian electronics workforce,” with 73% of workers in the study exhibiting “forced labor characteristics of some kind, a finding which suggests that the risk of forced labor in the industry is extremely high.” *Id.* at 254.
- The study found “conclusive evidence of forced labor in the sample” that “lend[s] a sense of pervasiveness” to the “previous, largely qualitative research on the subject.” *Id.* at 256.

- The “indicators of forced labor” reflect “systemic, structural factors shaping the lives of foreign workers in the country.” *Id.*
- Verité’s “core research findings broadly corroborate the troubling patterns” of forced labor in Malaysia identified in four prior studies by other international and human rights organizations, two of which did not focus on the electronic industry. *Id.* at 320.

Commerce responded to the Verité study with the following three sentences:

While the Verité Report states that its study “suggests that forced labor is present in the Malaysian electronics industry and can be characterized as widespread,” the Verité Report indicates that it is based on a sample of 501 workers in Malaysia’s E&E industry, and that 28 percent of the workers in its study were found to be in situations of forced labor and an additional 46 percent of the workers in its study were deemed to be “on the threshold” of forced labor. *We cannot conclude that data developed from the sample are applicable across the E&E sector in a manner that indicates that a similar proportion of workers in Malaysia’s E&E industry as a whole were in situations of forced labor as were identified in the study. Neither would it be appropriate to conclude that the findings of this report apply more broadly across the manufacturing sector.*

ECF 17–5, at 10–11 (emphasis added).

American Keg argues that Commerce’s rejection of the Verité report based on the report’s sample size was not based on any actual analysis. “At no time did Commerce acknowledge or contend with the report’s detailed review of its research methodology or sampling approach.” ECF 21, at 27. Nor did Commerce “offer any reasoned rebuttal” to Verité’s statement that its findings of forced labor “are probably low estimates.” *Id.* at 28 (quoting ECF 28, at 314).

In response, the government contends that there was no reason for Commerce to “employ statistical analyses of” the Verité report when the report itself states that because “the research employed nonprobability sampling, . . . the data are not representative in a statistical sense.” ECF 23, at 25 (quoting ECF 28, at 314 (government’s alterations omitted)).

The government’s post-hoc hypothesis does not excuse Commerce’s summary dismissal of the Verité report based on its sample size. One can only guess *why* Commerce deemed the Verité sample size inadequate, and for that reason the Court must remand so the agency can

explain its reasoning. *Cf. Nat'l Ass'n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1154 (D.C. Cir. 2013) (“Although [the] EPA does not need to fill the Federal Register with treatises on statistics, it must specify in greater detail *why* the equation it is using can accomplish the purpose for which [the] EPA is using the equation. This is not only required as part of [the] EPA’s obligation to demonstrate the reasonableness of its estimates with substantial evidence, but also to prevent an agency from using opaque statistical justification to cover a deficiency in its dataset.”).

On remand, Commerce must explain why the Verité sample size is inadequate, and in so doing it must address the material in the Verité report that fairly detracts from the Department’s conclusion that the report’s sample size is inadequate for purposes of determining whether “there is a reason to doubt” the Malaysian data. *Camau Frozen Seafood Processing Imp. Exp. Corp. v. United States*, 929 F. Supp. 2d 1352, 1356 (CIT 2013).

b. The governmental reports

American Keg also points to three governmental reports in the record addressing forced labor in Malaysia.

i. The Labor Department report

In 2019, the Labor Department issued a report entitled “2018 List of Goods Produced by Child Labor or Forced Labor.” ECF 28, at 201.¹⁵ This report identified forced labor as present in the Malaysian electronics and garment industries. ECF 28, at 217. Of additional relevance here—given that American Keg contends that Commerce should use labor data from Brazil rather than Malaysia—is the report’s comparison of how certain foreign workers make their way to Malaysia and Brazil.

In the case[] of the Nepal to Malaysia . . . corridor, where recruitment agencies are often used, the report found there was widespread non-compliance by licensed recruiters with legal and policy frameworks; few penalties applied by authorities; systemic illegal recruitment; and the ability to legally charge recruitment fees. In the Paraguay to Brazil corridor, the study found that informal networks of friends and family played a large role in helping workers find jobs and in organizing travel

¹⁵ The Labor Department issued this report pursuant to the Trafficking Victims Protection Act, which requires the Department to “develop and make available to the public a list of goods from countries that the Bureau of International Labor Affairs has reason to believe are produced by forced labor or child labor in violation of international standards.” 22 U.S.C. § 7112(b)(2)(C).

and accommodation. Additionally, . . . travel between the two countries is inexpensive, and easy to arrange.

Id. at 222.

ii. The State Department Report

In 2018, the State Department issued a study entitled “Trafficking in Persons Report.” See generally ECF 28, at 228–39. This report indicates that

[a]s reported over the past five years, Malaysia is a destination . . . for men, women, and children subjected to forced labor *The overwhelming majority of victims are among the estimated two million documented and an even greater number of undocumented migrant laborers in Malaysia. Foreign workers constitute more than 20 percent of the Malaysian workforce and typically migrate voluntarily—often illegally—from Bangladesh, India, Nepal, Burma, Indonesia, the Philippines, and other Asian countries. Employers, employment agents, and informal labor recruiters subject some migrants to forced labor or debt bondage when they are unable to pay the fees for recruitment and associated travel. Outsourcing or contract labor companies may not have oversight of personnel issues or day-to-day working conditions, leading to heightened vulnerabilities to exploitative labor conditions and a reduced ability to resolve disputes for foreign workers. Agents in labor source countries may impose onerous fees on workers before they arrive in Malaysia, and additional administrative fees after arrival in some cases cause debt bondage. Large organized crime syndicates are responsible for some instances of trafficking.*

Id. at 238 (emphasis added). The report also states that some foreign workers in the Malaysian electronics industry—among other industries—are “subjected to practices that indicate forced labor.” *Id.*

iii. The Central Bank of Malaysia report

In 2018, the Central Bank of Malaysia issued a report entitled “Low Skilled Foreign Workers’ Distortions to the Economy.” See ECF 28, at 498–598. The report stated that foreign workers comprise more than 20 percent of Malaysia’s workforce in manufacturing, agriculture, and construction sectors. *Id.* at 500. This “unchecked reliance on foreign workers . . . depresses overall pay.” *Id.* at 498; see also *id.* at 500 (“Critically, the readily available pool of cheaper low-skilled for-

eign workers *distorts domestic* [labor] prices.”) (emphasis added); *id.* at 501 (“Employment of cheaper foreign workers vis-à-vis locals allows employers to keep wages low . . .”). The report concluded that “Malaysia would benefit from a clear shift away from an economy that is . . . *dependent upon cost suppression* as a source of competitive strength . . .” *Id.* at 499 (emphasis added).

* * *

Commerce dismissed the relevance of these three reports, reasoning that they “do not address or demonstrate how pervasive forced labor may be in Malaysia’s [electrical and electronics] industry.” ECF 17–5, at 11. According to Commerce, neither these reports nor any other evidence in the administrative record indicates “the extent to which forced labor occurs in Malaysia’s [electrical] industry.” *Id.*

American Keg argues that while these three governmental reports do not provide a quantitative analysis, they do document practices in the Malaysian electrical and electronics sector that depress wage rates. ECF 21, at 28. The government has no response other than to repeat Commerce’s finding. ECF 23, at 24. Nor do Defendant-Intervenors have any response.

In reply, American Keg argues, and the Court agrees, that Commerce’s perfunctory rejection of these three governmental reports does not withstand scrutiny. *See* ECF 26, at 7. These reports corroborate the Verité report’s conclusion that “forced labor distorts both [electrical and electronics] wages and those for the broader manufacturing sector,” *id.*, and fairly detract from Commerce’s conclusion. On remand, Commerce must materially address the substance of these reports in conjunction with its reconsideration of the Verité report.

2. What does the record demonstrate regarding the extent to which the Malaysian manufacturing workforce is comprised of electrical and electronics industry workers?

Evidence from the Malaysian Department of Statistics in the administrative record states that employment in the country’s electrical and electronics industry totaled 322,308 persons in 2016, ECF 28, at 527, and that employment in all manufacturing in 2016 totaled 1,032,897. *Id.* at 182. Basic arithmetic indicates that employment in Malaysia’s electrical and electronics industry therefore must have comprised over 31 percent of the total Malaysian manufacturing labor force.

Commerce rejected this number on the basis that “the figures [American Keg] cites in its case brief come from two different sources

which are not necessarily comparable.” ECF 17–5, at 11. The government recharacterizes this as a rejection based on data sets for different years, *see* ECF 23, at 26, but that response errs at two levels. First, the relevant data sets were from the same year—2016. Second, the government mischaracterizes Commerce’s rationale, which was based on the finding of “two different sources.” *Id.* That rationale is not supported by substantial evidence, as American Keg’s data came from a single source—the Malaysian Department of Statistics. On remand, Commerce must address this evidence in the record that employment in Malaysia’s electrical and electronics industry comprised over 31 percent of the total Malaysian manufacturing labor force.

3. Does evidence of forced labor in 8.7 percent of the Malaysian manufacturing workforce render Malaysian wage data distorted?

Commerce finally decided that even if it assumed that (1) employment in Malaysia’s electrical and electronics industry comprised over 31 percent of the total Malaysian manufacturing labor force, and (2) the proportion of workers affected by forced labor conditions as reported by the Verité report were correct, “it would indicate that less than one-tenth [8.7 percent] of the workers in Malaysia’s overall manufacturing sector [are] implicated by forced labor.” ECF 17–5, at 11. Commerce concluded that in view of this number, “we find that the record does not demonstrate that the forced labor in Malaysia’s [electrical and electronics industry]” rendered the Malaysian labor data “aberrational or distortive, such that it cannot be considered the best information available *given the other information on the record.*” *Id.* (emphasis added).

American Keg argues, and the Court agrees, that Commerce did not actually analyze whether the Malaysian data under this forced labor cloud constituted the best available information on the record. Commerce instead relied on the facts that Malaysian data were from the primary surrogate country and contemporaneous with the period of investigation. *Id.* at 13. The preferences for a single surrogate country and contemporaneity are acceptable tiebreakers, provided Commerce undertakes a fair comparison of the competing datasets. *See, e.g., Peer Bearing Company-Changshan v. United States*, 804 F. Supp. 2d 1337, 1353 (CIT 2011) (“[T]he preference for use of data from a single surrogate country could support a choice of data as the best available information where the other available data ‘upon a fair comparison, are otherwise seen to be fairly equal’”). In other words, it is not enough for Commerce to say “the alternate data are insufficient because they are from a different surrogate country” or “are from two

years earlier”—rather, when “there is reason to doubt the primary surrogate country value, Commerce must address the conflicting evidence on the record that may counsel against” Commerce’s preference for a single surrogate country. *Camau Frozen Seafood*, 929 F. Supp. 2d at 1356. “Not addressing the conflicting evidence on the record . . . fails the substantial evidence test because it does not [consider] record evidence contrary to Commerce’s determination.” *Id.*

* * *

The record here indicates that forced labor occurs to some degree among foreign workers in the Malaysia manufacturing workforce, and that Malaysia’s heavy reliance on foreign workers depresses local wages to some extent. As a result, there is a non-frivolous question about whether, and, if so, to what extent, Malaysia’s wage data that Commerce used to calculate Ningbo Master’s rate are distorted or unreliable. Commerce has not explained—apart from its talismanic invocation of its single-country surrogate and contemporaneity preferences—why the Malaysian data under this forced labor cloud are preferable to the Brazilian dataset.

On remand, Commerce must do so. Insofar as Commerce opts on remand to use the Brazilian data rather than Malaysian data, it must reconsider Ningbo Master’s dumping margin accordingly.¹⁶

II. Verification of Ningbo Master’s corrections¹⁷

During verification, Ningbo Master submitted additional information that it and the government characterize as “minor corrections.” See ECF 17–5, at 15–16 (government); ECF 25, at 14–20 (Ningbo Master). American Keg disputes that characterization and argues that Commerce “failed to verify” this new information that “was dispositive to the investigation.” ECF 21, at 31.

According to American Keg, this issue matters because Commerce preliminarily assigned Ningbo Master a 2.01 percent dumping margin. ECF 17–5, at 15. By statute, any dumping margin of less than two percent is deemed *de minimis* and is to be disregarded. See 19 U.S.C. §§ 1673b(b)(3) (preliminary decisions), 1673d(a)(4) (final decisions). Thus, even a small change in Ningbo Master’s dumping margin resulting from “corrections” supplied during verification might result in the company receiving a lower margin that would fall within

¹⁶ Due to the Court’s resolution of the separate rate issue discussed below, any adjustments by Commerce to Ningbo Master’s rate would also necessarily carry over to the rate for Jingye and, insofar as it remains a successful separate rate applicant after proceedings on remand, Ulix.

¹⁷ This discussion corresponds to Commerce’s findings in ECF 17–5, at 15–16.

the *de minimis* threshold—and, indeed, that is exactly what happened, because Ningbo Master received a zero percent final dumping margin following verification. *See* 84 Fed. Reg. at 57,011.

Furthermore, because Ningbo Master was the only separate rate respondent in this investigation to undergo individual examination, the rate assigned to Ningbo Master had a domino effect as to Jingye and Ulix because Commerce determined them to be eligible for separate rates. *See* ECF 17–5, at 4; 84 Fed. Reg. at 57,011.

A. The verification record

Commerce’s verification memorandum described various corrections that Ningbo Master submitted. *See* ECF 28, at 667. Most of these were non-substantive on their face, but American Keg zeroes in on a correction to material inputs affecting the factors of production, i.e., Ningbo Master’s costs: “Ningbo Master found that it mistakenly included consumption amounts for July 2018, which is outside the [period of investigation], for several inputs: drawing oil, cleaning agent[,] and oil removal agent.” *Id.* In short, with this correction, Ningbo Master was able to adjust its costs, which in turn could (and did) directly result in a lower dumping margin.¹⁸

Commerce’s verification memorandum stated that Ningbo Master provided supporting documentation for its corrections and that Commerce “verified the corrections during the course of conducting the verification procedures.” *Id.* at 667. Notably, the memorandum does not indicate *how* Commerce verified any of the corrections.

Commerce’s final decision states—in the passive voice, the last refuge for evading accountability—that Ningbo Master’s corrections “were *subject to* verification,” ECF 17–5, at 16 (emphasis added), but then states that “[a]t verification, [Commerce] *chose other inputs to examine* and we found no discrepancies.” ECF 17–5, at 16 (emphasis added). Indeed, the verification memorandum confirms that Commerce chose to examine other material inputs during verification—not the corrected material inputs of drawing oil, cleaning agent, and oil removal agent that American Keg identifies as dispositive. *See* ECF 28, at 671–74 (identifying in granular detail the specific “material inputs” verified and manner of verification).

B. Analysis

American Keg argues that “Commerce failed to verify those changes in any way” and contends that “Commerce neglected to verify or confirm that the claimed consumption adjustments were accurate.”

¹⁸ After Ningbo Master submitted its corrections, Commerce asked the company to submit “a revised . . . factors-of-production database incorporating the changes,” ECF 28, at 668, which confirms the significance of the correction to the company’s costs.

ECF 21, at 32 (citing ECF 28, at 647; ECF 28, at 671–74). American Keg further argues that in view of Commerce’s statutory obligation to “verify all information relied upon,” 19 U.S.C. § 1677m(i), the Department was required to verify the corrections insofar as they were dispositive. Here, neither the government nor Ningbo Master disputes that the corrections to the material inputs of the factors of production were dispositive in allowing Ningbo Master to clear the *de minimis* threshold.

Consistent with the Court’s understanding of the record, the government all but admits that Commerce didn’t verify Ningbo Master’s corrections because (in the government’s view) there was no requirement to do so. *See* ECF 22, at 22 (arguing that “Commerce verified the record that it determined was appropriate and found no discrepancies. No more was required.”). According to the government, because Ningbo Master’s corrections “*were subject to Commerce’s verification*”—meaning, in theory they could have been verified had Commerce opted to do so—the Department satisfied its verification obligations. *Id.* (emphasis added).

Ningbo Master, on the other hand, argues that “the verifiers did closely verify the minor corrections as presented on site,” ECF 25, at 14, but cites nothing in the record demonstrating that proposition beyond the verification memorandum’s statement that Commerce verified the corrections, *id.* at 14–15 (citing ECF 28, at 667). As discussed above, that statement is belied by both Commerce’s final decision—which indicates that the Department chose to verify “*other inputs*”—and the report’s granular description of Commerce’s verification of inputs that did not include the corrected inputs of drawing oil, cleaning agent, and oil removal agent. *See* ECF 28, at 671–74.

The government and Ningbo Master correctly argue that Commerce has wide discretion in determining what record information to verify, and that the Department is under no obligation to verify every piece of information supplied to it. *See* ECF 22, at 30–31 (government); ECF 24, at 16–17 (Ningbo Master). Given that wide latitude, the Court’s limited role is to “evaluate for reasonableness the way in which Commerce chose to interpret the verification requirement.” *Micron Tech., Inc. v. United States*, 117 F.3d 1386, 1397 (Fed. Cir. 1997).

Here, Commerce preliminarily decided to impose a 2.01 percent antidumping margin on Ningbo Master—on the knife’s edge of the *de minimis* threshold of two percent. On the first day of Commerce’s verification in China, Ningbo Master presented the Department with its list of “minor corrections” that included—in addition to such trivial corrections as the name of the port of entry, *see* ECF 28, at

667—changes in *values* of material inputs to the factors of production that adjusted the company’s costs. Neither the government nor Ningbo Master disputes American Keg’s contention—which the record confirms—that this adjustment flipped the investigation’s outcome by lowering Ningbo Master’s margin beneath the *de minimis* threshold. *See* ECF 21, at 16 (American Keg’s contention); ECF 28, at 734 (stating that Commerce modified the preliminary decision by using new databases that incorporated Ningbo Master’s corrective material in order to make the final decision); ECF 17–5, at 15 (summarizing parties’ arguments that Ningbo Master’s preliminary margin of 2.01 percent could easily move below *de minimis* threshold if Commerce accepted corrections); 84 Fed. Reg. at 57,011 (stating that Ningbo Master’s margin was *de minimis* and thus was set at zero).

Because (1) Ningbo Master’s corrections to its material inputs of drawing oil, cleaning agent, and oil removal agent were dispositive to the outcome of Commerce’s final decision, and (2) Ningbo Master tendered these corrections *after* Commerce’s preliminary decision, the Court concludes that Commerce unreasonably failed to verify those corrections and thereby abused its discretion. *Cf. Smith Corona Corp. v. United States*, 771 F. Supp. 389, 398 (CIT 1991) (“Verification tests the facts upon which conclusions are to be drawn and indicates whether they will reflect an acceptable degree of certainty,” and therefore Commerce has “a statutory obligation to properly verify those facts which it finds dispositive.”).

While the Court recognizes that Commerce need not verify everything in the administrative record, *see U.S. Steel*, 953 F. Supp. 2d at 1348, the Court concludes that at least in the circumstances presented here, it was unreasonable for Commerce to take Ningbo Master’s corrections on faith. A respondent that waits until after Commerce issues a preliminary decision has the opportunity and the motive to engage in informed gamesmanship in response to that decision. To reasonably guard against that possibility, Commerce should—to borrow an expression from President Reagan—trust but verify such corrections at least where, as here, such corrections are dispositive.

On remand, Commerce must reconsider its verification of Ningbo Master’s corrections to its material inputs and, if necessary, recalculate Ningbo Master’s rate. In addition, because other successful separate rate applicants automatically receive the same rate that Commerce calculates for Ningbo Master as the mandatory respondent, insofar as Commerce recalculates that rate, the Department must also assign it to the successful separate rate applicants.

III. Separate rate eligibility for Jingye and Ulix¹⁹

American Keg asks the Court to remand Commerce's decision to grant separate rate status to respondents Jingye and Ulix, contending that they failed to rebut the presumption that they are under state control. *See* ECF 21, at 35–37.

Insofar as the Court can determine, there are three separate documents in the record in which Commerce addressed the separate rate issue: (1) a preliminary decision memorandum, ECF 28, at 610 *et seq.*; (2) a subsequent separate rate memorandum, *id.* at 737 *et seq.*; and (3) the final issues and decision memorandum, ECF 17–5.²⁰ While the preliminary decision was just that—preliminary—the separate rate memorandum referred back to it. *See* ECF 28, at 739 (“The petitioner’s arguments provide no evidentiary basis for reversing our decision in the *Preliminary Determination* that Jingye is eligible for a separate rate.”) and 740 (“[W]e *continue to find* that the information on the record demonstrates that Ulix’s [sic] is not affiliated with its U.S. customer [and] we *continue to find* that Ulix is eligible for a separate rate.”) (emphasis added).

The first document conflated Commerce's analysis as to both entities, while the latter two documents addressed each entity separately. Accordingly, in order to track Commerce's analysis, the Court first summarizes the preliminary decision applicable to both entities and then discusses each applicant separately.

A. The preliminary decision's discussion of both separate rate applicants

Commerce's preliminary decision did not address any evidence relating specifically to Jingye or Ulix. Instead, it conflated the discussion of both entities and asserted in conclusory fashion that both had established the absence of *de jure* and *de facto* state control—the dual tests that Commerce requires separate rate applicants to satisfy.

Before this Court, American Keg appears to dispute whether both Jingye and Ulix established the absence of *de facto* state control.²¹ As to that issue, Commerce found as follows:

¹⁹ This discussion corresponds to Commerce's findings in ECF 17–5, at 21–23.

²⁰ In this opinion, the Court refers to the preliminary decision memorandum as the “preliminary decision” and the issues and decision memorandum as the “final decision.”

²¹ American Keg's opening brief asserts that Commerce overlooked “material omissions and discounted evidence fairly detracting from its ultimate conclusion that these companies were free of *de facto* and *de jure* government control,” ECF 21, at 37, but American Keg makes no further reference to “*de jure* government control” or the applicable test for such control. Thus, the Court concludes that American Keg has abandoned any challenge to Commerce's determination that Jingye and Ulix were free from *de jure* state control.

The evidence placed on the record of this investigation supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that the companies: (1) set their own prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.

Id. at 623–24.²² The only relevant citation in support of this paragraph was a vague blanket citation in a footnote to “Jingye’s and Ulix’s separate rate applications dated November 21, 2018.” *Id.* at 624 n.93.

Commerce further stated that “the evidence placed on the record of this investigation with respect to [Jingye and Ulix] demonstrates an absence of government control Accordingly, we preliminarily grant[] separate rates to the separate rate applicants” *Id.* at 624.

B. Ulix

The parties appear to agree that whether Ulix demonstrated the absence of *de facto* state control turns on whether the record “establishes that Ulix conducted an independent price negotiation with its unaffiliated U.S. customer.” ECF 17–5, at 23. As discussed below, the parties further narrow the question to whether Ulix has demonstrated that its U.S. customer is unaffiliated, without any discussion or mention whatsoever of whether Ulix independently sets its own prices. Because the parties have so narrowed the question, the Court assumes that resolution of American Keg’s challenge to Commerce’s separate rate determination as to Ulix turns on whether the U.S. customer is unaffiliated.²³

1. Separate rate memorandum

Commerce’s separate rate memorandum summarized the parties’ arguments as to Ulix but failed to cite any evidence. Commerce then stated its findings as to Ulix as follows:

²² The parties agree, and therefore the Court assumes, that a separate rate applicant must demonstrate the four criteria identified by Commerce above to establish the absence of *de facto* state control.

²³ The parties fail to clearly tie this “unaffiliated customer” standard to Commerce’s four-part test for *de facto* control, *see above* note 22. Nevertheless, because the parties agree as to the applicable standard, the Court will apply it.

The record does not support a finding that there exists an affiliation between Ulix and its U.S. customer that the petitioner purports exists. The record establishes that the owner of the unaffiliated U.S. customer also owns another U.S. company. However, the record establishes that there is no relationship between Ulix[]and the individual who owns both [U.S. companies] and thus there is no basis to find affiliation between Ulix and its U.S. customer or its U.S. customer's affiliate. We agree with Ulix that the fact that the companies share part of their names is not an indicator of affiliation. We continue to find that the information on the record demonstrates that Ulix's [sic] is not affiliated with its U.S. customer. Accordingly, we continue to find that Ulix is eligible for a separate rate.

ECF 28, at 740. This paragraph lacked any citations to the administrative record, any discussion of American Keg's evidence, or any explanation of why the agency found that evidence unconvincing.

2. Final decision

Commerce's final decision summarized the parties' arguments as to Ulix and then stated as follows:

We continue to find that the evidence placed on the record of this investigation supports a finding of the absence of de facto government control of Ulix based on record statements and supporting documents. Specifically, we find that the record establishes that Ulix conducted an independent price negotiation with its unaffiliated U.S. customer. Accordingly, we continue to grant a separate rate to applicant Ulix. Because of the proprietary nature of the reasoning behind our position, see the Separate Rate Analysis Memorandum for a full discussion of the issue.

ECF 17-5, at 23. Here, Commerce cited specific portions of Ulix's evidence but did so without analysis. Commerce still did not cite any of American Keg's evidence.

3. The parties' arguments

The government's argument defending Commerce's findings as to Ulix is essentially confined to the following two sentences in its brief:

Commerce determined that the record does not support the conclusion that Ulix and its U.S. customer were affiliated. Specifically, Commerce explained that "the record establishes that Ulix conducted an independent price negotiation with its unaf-

filiated U.S. customer,” and the record supports a normal customer relationship between Ulix and its U.S. customer.

ECF 23, at 35 (citations to the administrative record omitted).

American Keg, on the other hand, argues that the record contains ample evidence demonstrating that Ulix *may* be affiliated with the U.S. customer in question but that Commerce never addressed any of that evidence and Ulix responded solely with arguments, rather than actual evidence. ECF 21, at 37–41. In response, the government argues that American Keg’s position in this case amounts to demanding that Commerce prove a negative. ECF 23, at 36–37.²⁴

4. Analysis

In reviewing Commerce’s decision, “the Court must consider, *inter alia*, whether the Department has examined the relevant data and articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Adv. Tech. & Materials Co. v. United States*, 35 CIT 1380, 1387 (2011) (cleaned up) (citing *Motor Veh. Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). “The agency must offer an explanation of the decision that is clear enough to enable judicial review, and cannot leave vital questions, raised by comments which are of cogent materiality, completely unanswered.” *Id.* (cleaned up) (citing *United States v. Nova Scotia Food Prods.*, 568 F.2d 240, 252 (2d Cir. 1977)).

Given these principles, it is not enough for Commerce simply to “determine,” as it did here, that the record does not support a particular conclusion without addressing the evidence both in support of and in derogation of that conclusion, and it is likewise not enough for Commerce to “continue to find” something that is unsupported by a discussion of the evidence in the first instance. Although Commerce need not address every single piece of evidence, “it must address significant arguments and evidence which seriously undermines its reasoning and conclusions.” *Altix, Inc. v. United States*, 167 F. Supp. 2d 1353, 1374 (CIT 2001).

Here, Commerce simply failed to address American Keg’s evidence that the U.S. customer was affiliated with Ulix. That evidence fairly detracts from Commerce’s conclusion and, therefore, must be addressed on remand. “An agency determination may not be sustained without considering contradictory evidence or evidence from which conflicting inferences could be drawn.” *DAK Ams. LLC v. United States*, 456 F. Supp. 3d 1340, 1352 (CIT 2020) (cleaned up) (citing

²⁴ Although Ulix participated in the administrative proceedings before Commerce, it chose not to intervene here to defend Commerce’s decision.

Universal Camera Corp. v. NLRB, 340 U.S. 474, 487 (1951)). The Court must therefore remand for Commerce to provide such an explanation. *Cf. Adv. Tech. & Materials Co. v. United States*, 885 F. Supp. 2d 1343, 1362 (CIT 2012) (remanding for Commerce to address petitioner’s separate rate arguments).

Although the government argues that “American Keg would have the Court hold that Commerce’s determination is not supported by substantial evidence because Commerce did not identify evidence that an affiliation did not exist,” ECF 23, at 36, the Court’s remand is not based on Commerce’s failure to *identify* evidence to support its conclusion, but rather on Commerce’s failure to *address the evidence in the administrative record* to explain why it found American Keg’s submissions unconvincing. That is, while Commerce claimed to have “considered and analyzed the record evidence,” *id.*, the Court is required to remand because the administrative record does not reflect that Commerce actually did so.²⁵ Again, this is why it matters that Commerce’s preliminary decision failed to discuss the evidence: To the extent the later decisions were based on the preliminary decision, they cannot stand on their own when the preliminary decision was deficient—Commerce cannot simply point back to a deficient preliminary decision and say that it “continues” to make the same finding.

C. Jingye

Before Commerce, American Keg argued that the record demonstrated that Jingye was an affiliate or successor-in-interest to another Chinese company, Guangzhou Heshun Machinery Co., Ltd. (“GZ Heshun”), and that as a result Commerce was obligated to investigate whether GZ Heshun was controlled by the Chinese government for purposes of Jingye’s separate rate status.

1. Separate rate memorandum

Commerce’s separate rate memorandum addressed Jingye as follows:

Finally, we disagree with [American Keg] that Jingye failed to provide information regarding . . . GZ Heshun Keg. In this instance, additional information was not required as Jingye is the separate rate applicant; the record established that GZ Heshun Keg had no legal ties to Jingye and it ceased operations in

²⁵ Similarly, the government attempts to wave away American Keg’s arguments by stating that “the evidence of a ‘potential affiliation’ is nothing more than unsubstantiated speculation.” ECF 23, at 37. While it is true that a “potential affiliation” is not the same thing as a proven affiliation between Ulix and its American customer, it is also true that if American Keg introduced evidence demonstrating a potential affiliation, Commerce was obligated to do more than ignore it.

2015, well before the [period of investigation] in this investigation. The petitioner’s arguments provide no evidentiary basis for reversing our decision in the *Preliminary Determination* that Jingye is eligible for a separate rate. Accordingly, as demonstrated by the record, we continue to find an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*, and, therefore, continue to grant a separate rate to Jingye.

ECF 28, at 739 (footnote references omitted). As support for the second sentence, Commerce cited its final decision (ECF 17–5) and referred to it as containing “Commerce’s consistent position with respect to this issue.” The Court discusses that document below.

2. Final decision

Commerce’s final decision included a summary of the parties’ contentions about Jingye and then stated as follows:

We continue to find that the evidence on the record of this investigation supports a finding of the absence of *de facto* and *de jure* government control for Jingye based on record statements and supporting documentation. . . .

With respect to GZ Heshun Keg, the record demonstrates that this company is a separate legal entity from Jingye. GZ Heshun Keg applied for a registration cancellation in August 2015 and ceased operations before the [period of investigation]. Because Jingye is the exporter and separate rate applicant during the [period of investigation], we determined it unnecessary to examine GZ Heshun Keg and its management for evidence of government control. . . . Accordingly, we continue to find Jingye has demonstrated its eligibility for a separate rate.

ECF 17–5, at 22 (footnote reference omitted). Commerce cited Jingye’s supplemental questionnaire response in support of its separate rate application as documentation for the finding that Heshun ceased operations.

3. The parties’ arguments

American Keg argues that Commerce failed to address evidence in the administrative record that “left open the possibility that Jingye may be subject to government control through its relationship with Guangzhou Heshun Machinery Co., Ltd.” ECF 21, at 41. In support of this theory, which the Court understands to implicate Commerce’s

presumption of *de facto* governmental control, American Keg asserts two related lines of attack.

First, American Keg argues that the administrative record shows that “Jingye was an affiliate of or successor-in-interest to GZ Heshun,” *id.*, such that Jingye needed to produce evidence documenting GZ Heshun’s ownership, *id.* at 42–43. According to American Keg, the record shows that (1) Jingye’s contact e-mail was the e-mail address for a sales employee of GZ Heshun, who was also sales manager for Jingye, *see id.* at 41; (2) Jingye promoted itself as “emerging” from GZ Heshun and advertised production standards certifications antedating Jingye’s 2014 incorporation, *id.*; (3) Jingye succeeded as supplier to one of GZ Heshun’s customers, *id.*; and (4) GZ Heshun continued to maintain an online marketing presence after its ostensible 2015 dissolution, *id.* at 42. American Keg further complains that in response to a question about the “nature” of Jingye’s relationship with GZ Heshun and whether the latter was involved in the former’s operations in the U.S., Jingye offered no information beyond GZ Heshun ceasing operations in 2015. *Id.*

Second, American Keg argues that the record demonstrates a [[
]] relationship between the owner of GZ Heshun and officers of Jingye. ECF 20, at 41–42. Specifically, American Keg points to the fact that the owner of GZ Heshun was the [[

]]. *Id.* at 42. American Keg further argues that Commerce should have inquired into whether GZ Heshun’s owner had any *de facto* involvement in Jingye’s operations because the record is silent as to whether GZ Heshun’s owner had or has a relationship with the Chinese government. *Id.* at 43.

The government repeats Commerce’s reasoning, arguing that because GZ Heshun is both defunct and legally independent of Jingye, any relationship that GZ Heshun’s management may have had with the Chinese government is irrelevant. ECF 23, at 37–39. The government further argues that the [[
]] relationship that GZ Heshun’s owner has to Jingye’s [[

]] is irrelevant. ECF 22, at 38.

For its part, Jingye—in addition to repeating the government’s arguments—observes that the record indicates the company certified to Commerce that “none of Jingye’s shareholders, managers, or director members has any relationship with” the Chinese government at any level. ECF 25, at 21. Jingye further characterizes as “extreme” the proposition that Commerce is required to probe the governmental ties of third parties that have a connection with owners or management of a separate rate applicant. *Id.* at 22.

4. Analysis

As noted above, the parties agree as to the applicable four-part test for *de facto* control. As described by American Keg, that test asks

1. Whether the prices are set by, or are subject to the approval of, a government agency,
2. Whether the respondent has authority to negotiate and sign contracts and other agreements,
3. Whether the respondent has autonomy from the government in making decisions regarding the selection of management, and
4. Whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing losses.

ECF 21, at 36.

Commerce determined that the defunct GZ Heshun was irrelevant to whether Jingye was subject to *de facto* control under this four-part test. Here, American Keg has not explained how the defunct GZ Heshun is relevant *under that test*, even if Jingye—a separate entity—is the successor-in-interest. The Court concludes that Commerce could reasonably find, in view of the applicable four-part *de facto* control test, that this information was irrelevant to its determination on that issue.

Similarly, the Court concludes that Commerce could reasonably find that questions about the [[]] relationship between the former owner of GZ Heshun and [[]] Jingye are irrelevant *under the applicable test*, as American Keg has not explained how that information could have any relevance. The relevant question before Commerce was whether Jingye “has autonomy from the government in making decisions regarding the selection of management”—not whether *third parties* somehow indirectly connected to Jingye have such autonomy. On the relevant question, the record here indicates that “none of Jingye’s shareholders, managers, or director members has any relationship with” the Chinese government at any level. ECF 25, at 21.

In short, Commerce’s decision that Jingye is eligible for separate rate status is supported by substantial evidence, and American Keg’s arguments to the contrary do not persuade the Court otherwise. The Court therefore sustains that determination.

* * *

Order

For all the foregoing reasons, the Court remands this matter to Commerce for further proceedings consistent with this opinion. Accordingly, it is hereby

ORDERED that New American Keg's motion for judgment on the agency record is **GRANTED IN PART and DENIED IN PART**, and it is further

ORDERED that Commerce's decision to rely on surrogate value data from Malaysia to value the labor factor of production in calculating Ningbo Master's rate is **REMANDED** for further consideration consistent with the foregoing opinion and for recalculation of Ningbo Master's separate rate if necessary; and it is further

ORDERED that Commerce's ostensible verification of corrective material submitted by Ningbo Master is likewise **REMANDED** for further consideration consistent with the foregoing opinion and recalculation of Ningbo Master's separate rate if necessary; and it is further

ORDERED that Commerce's decision to grant separate rate status to Guangzhou Ulix Industrial & Trading Co., Ltd., is **REMANDED** for further consideration consistent with the foregoing opinion; and it is further

ORDERED this case will proceed with the following schedule:

1. Commerce must file its remand determination on or before 120 days after the date of entry of this opinion and order;
2. Commerce must file the administrative record on or before 14 days after the date on which it files the remand determination; and
3. The Court will issue a scheduling order after Commerce files the administrative record.

Dated: March 23, 2021
New York, NY

/s/ M. Miller Baker
M. MILLER BAKER, JUDGE

Slip Op. 21–34

UNITED STATES, Plaintiff, v. GREENLIGHT ORGANIC, INC. AND PARAMBIR SINGH AULAKH, Defendants.

Before: Jennifer Choe-Groves, Judge
Court No. 17–00031

[Granting Defendants’ motion for a protective order, granting in part and denying in part Defendants’ motion to compel, and granting in part Defendants’ motion to amend the scheduling order.]

Dated: March 30, 2021

William Kanellis and Kelly Krystyniak, Trial Attorneys, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Plaintiff United States. With them on the brief were *Brian M. Boynton*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Patricia M. McCarthy*, Assistant Director.

Robert B. Silverman and Joseph M. Spraragen, Grunfeld Desiderio Lebowitz Silverman & Klestadt LLP, of New York, N.Y., for Defendants Greenlight Organic, Inc. and Parambir Singh Aulakh.

OPINION AND ORDER

Choe-Groves, Judge:

This matter involves a discovery dispute in a claim brought under 19 U.S.C. § 1592. Plaintiff United States (“Plaintiff” or “the Government”) brings this 19 U.S.C. § 1592 civil enforcement action seeking to recover unpaid duties and fees and to affix penalties, alleging that Greenlight Organic, Inc. (“Greenlight”) and Parambir Singh “Sonny” Aulakh (“Aulakh”) (collectively, “Defendants”) imported wearing apparel into the United States fraudulently. Second Am. Compl. ¶ 1, ECF No. 124 (“Second Am. Compl.” or “Second Amended Complaint”). Section 1592 prohibits false statements or the omission of material information in the course of importing merchandise into the United States through fraud, gross negligence, or negligence. 19 U.S.C. § 1592(a)(1). Plaintiff alleges that Greenlight misclassified and undervalued its entries of subject merchandise fraudulently in violation of 19 U.S.C. § 1592(a)(1). Second Am. Compl. ¶ 1.

Before the court are three motions filed by Defendants.

The first motion is Defendants’ Motion for Protective Order Precluding the Government from Requiring the Deposition Locations of Monika Gill, Neel-Kamal Aulakh, Apramjeet Singh, and Parambir Aulakh to be the U.S. Custom House in San Francisco, ECF No. 145 (“Motion for Protective Order” or “Mot. Protective Order”). Defendants requested that the court prohibit the Government from requiring Monika Gill, Neel-Kamal Aulakh, Apramjeet Singh, and Defen-

dant Aulakh to travel to the U.S. Customs House in San Francisco in the midst of the COVID-19 pandemic to appear in person for depositions, and requested instead that the court order the depositions to take place remotely via videoconference at the witnesses' respective residences or other agreed-upon locations. Mot. Protective Order at 1.

The second motion is Defendants' Expedited Motion for an Order Compelling Plaintiff for Production of a Properly Produced Privilege Log; and a Complete Production Response, ECF No. 146 ("Motion to Compel" or "Mot. to Compel"). Defendants requested that the court order Plaintiff to produce five categories of documents, namely: (1) documents regarding entry-specific loss of revenue calculations and domestic value calculations; (2) an updated privilege log regarding documents cited as "3-01;" (3) government instructive manuals; (4) previously produced documents; and (5) other critical documents. Mot. to Compel at 8, 10, 11, 15, 17-18.

The third motion is Defendants' Motion to Amend the Scheduling Order, ECF No. 144 ("Motion to Amend Scheduling Order" or "Mot. to Amend"). Defendants requested "additional time to resolve discovery disputes; to complete the review of voluminous documents that have been exchanged in this case; to exchange additional outstanding production in preparing for depositions; and to afford the [P]arties time to narrow the issues through requests for admission[]." Mot. to Amend at 1-2.

Plaintiff opposed all three motions. *See* Pl.'s Consol. Resp. Defs.' Filings Mar. 18, 2021, ECF No. 147 ("Pl. Consol. Resp."). Defendants filed a reply to Plaintiff's opposition. *See* Defs.' Proposed Reply Pl.'s Consol. Resp. Defs.' Filings Mar. 18, 2021, ECF No. 152. The court held a videoconference with the Parties regarding the three motions on March 23, 2021. *See* Status Conference, ECF No. 153 ("March 2021 Status Conference" or "Mar. Status Conf."). The court will address each motion in turn.

DISCUSSION

I. Legal Standard

District courts have broad discretion in deciding discovery matters. *See generally Accent Packaging, Inc. v. Leggett & Platt, Inc.*, 707 F.3d 1318, 1329 (Fed. Cir. 2013) (acknowledging the court's discretion in denying additional discovery); *Florsheim Shoe Co. v. United States*, 744 F.2d 787, 797 (Fed. Cir. 1984) (stating that "[q]uestions of the scope and conduct of discovery are, of course, committed to the discretion of the trial court"). Discovery must be relevant to the issues in the case, including any party's claim or defense, or reasonably calcu-

lated to lead to the discovery of admissible evidence. *See* USCIT R. 26(b)(1).

II. Motion for Protective Order

Defendants requested a protective order to prevent Monika Gill, Neel-Kamal Aulakh, Apramjeet Singh, and Defendant Aulakh from being deposed in person, and instead to allow these witnesses to be deposed remotely via videoconference due to the health risks associated with travel and appearing in person during the COVID-19 pandemic. Mot. Protective Order at 1, 5–7. The Government objected to this request and claimed that there was no credible reason why the witnesses “could not attend a deposition at the U.S. Customs [H]ouse following COVID protocols.” Pl. Consol. Resp. at 15.

At the March 2021 Status Conference, the Government stated that counsel was willing to conduct depositions that the court characterizes as “semi-remote,” in which counsel for the Government and Defendants would appear remotely by videoconference from Washington, D.C. and New York, N.Y. respectively, while three of the witnesses would be present in person for their depositions at the U.S. Customs House in San Francisco. *See* Mar. Status Conf. at 3:35–4:20; 10:37–46. Notably, the Government agreed to allow one witness who is eighty years old to appear via videoconference rather than travel to the U.S. Customs House in San Francisco to testify in person. *Id.* at 3:12–27. The Government argued that it is necessary to have the witnesses appear in person so they could be shown documents during their depositions. *See id.* at 4:35–5:50. The court advised counsel that videoconference technology allows for electronic document sharing and screen sharing, which would eliminate the need for the witnesses to appear in person in order to review any documents. *Id.* at 10:50–12:10. Defendants objected to having the witnesses appear in person due to health risks associated with travel and staying indoors for an extended period of time with others during the depositions in light of the current COVID-19 pandemic. Mot. Protective Order at 5–7; *see also id.* at 5:58–7:25.

USCIT Rule 26(c)(1) stipulates that the court may “issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense” during discovery proceedings. USCIT R. 26(c)(1). The moving party must confer with the other affected parties to resolve the dispute and show good cause for a protective order. *See id.*

The court takes judicial notice that travel and remaining indoors for extended periods of time with other people during the COVID-19 pandemic poses personal health risks. *See generally Covid-19*, CTR.

DISEASE CONTROL & PREVENTION, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (last visited Mar. 30, 2021). The Government's proposal for depositions, even following the Government's suggested "COVID protocols," would require each witness to travel to be deposed in person, to interact with other people indoors, and to spend at least several hours, if not several days each, in an enclosed office space during the depositions. Counsel for Defendants identified numerous health-related reasons why the individual witnesses object to appearing in person at their depositions, offering that all of the witnesses are willing to appear instead remotely by videoconference. The court notes that the attorneys under this proposed arrangement would not undertake travel themselves but would appear remotely by video.

The court concludes that prioritizing in-person depositions over potential health risks would pose an undue burden on the witnesses during the COVID-19 pandemic. *See* USCIT R. 26(c)(1). It would be highly burdensome to require the witnesses to appear in person due to their concerns over the potential health risks involved, while it would be much less burdensome and far safer for the witnesses to testify remotely via videoconference. In either case, the same result would ensue because the witnesses are willing to provide deposition testimony under oath and be cross-examined by the Government. In a remote videoconference, the main differences would be that the witnesses would be shown electronic documents through screen sharing and would not need to wear a face mask while speaking.

In addition, the Government expressed concerns that Defendant Aulakh might "[cut] off communication [via videoconference] to avoid responding to a question." Pl. Consol. Resp. at 15. The court observes that there is no evidence to suggest that Defendants would engage in such behavior, and any appropriate motions may be filed if depositions cannot be completed. The court will not order in person depositions to prevent disruptive behavior that is purely speculative.

The court will not compel the witnesses to travel and undertake health risks against their will to appear in person for depositions, particularly when videoconference court proceedings have become second nature in this Court over the past year during the COVID-19 pandemic. Defendants have shown good cause and the court grants the Motion for Protective Order.

III. Motion to Compel

A. Documents Regarding Entry-Specific Loss of Revenue and Domestic Value Calculations

Defendants requested loss of revenue and domestic value calculations for each entry that Plaintiff alleged were entered fraudulently. Mot. to Compel at 9.

During the March 2021 Status Conference, the Government explained that an alternative loss of revenue and domestic value methodology was employed in lieu of the entry-by-entry appraisal method due to gaps within the record caused by Defendants' alleged destruction or loss of evidence. *See* Mar. Status Conf. at 22:35–23:17; Pl. Consol. Resp. at 12.

Defendants stated that they were in the process of creating the entry-by-entry analyses themselves. *Id.* at 31:50–32:16. Defendants asserted that they were entitled to the requested information and reiterated their demand for the Government to produce an entry-by-entry appraisal that would reflect “all the details, loss of revenue, and domestic value for all the goods of every entry.” *Id.* at 32:16–20, 32:36–45.

The issue of whether the Government is required to provide an entry-by-entry analysis, or whether the Government is permitted by regulation to use an alternative sampling methodology to calculate Defendants' duty and penalty amounts, is a legal matter that will be resolved in this litigation during either the dispositive motion phase or at trial. *See generally* Pl. Consol. Resp. at 12; 19 C.F.R. § 163.11(c)(3)(i) (providing that the Government may use statistical sampling techniques when “[r]eview of 100 percent of the transactions is impossible or impractical”). If the case proceeds to trial, the jury will be instructed as to the appropriate law that applies. At this stage of discovery, therefore, the court concludes that Defendants' requests for entry-by-entry calculations are relevant to the issues in the case, but are outside the scope of the Government's relative access to relevant information under USCIT Rule 26(b)(1). The court will not compel Plaintiff to produce documents that it does not have in its possession, nor will the court compel Plaintiff to create documents based on documents that it does not have in its possession. The Motion to Compel is denied in part regarding entry-specific loss of revenue and domestic value calculations.

B. Privilege Log For Documents Cited as “3-01”

Defendants requested an updated privilege log regarding documents cited as “3-01,” over which the Government had asserted

privilege. *See* Mot. to Compel at 11. During the March 2021 Status Conference, however, the Government clarified that it had mistakenly identified documents cited as “3-01” as privileged. *See* Mar. Status Conf. at 44:35–45:45. The Government clarified further that documents cited as “3-01” had been produced to Defendants earlier in discovery. *Id.* at 43:20–40; *see also* Mot. to Compel Ex. 6. Upon this representation, Defendants withdrew their request for an updated privilege log for documents cited as “3-01.” *Id.* at 46:46–56.

C. Government Instructive Manuals

Defendants requested any government instructive manuals regarding the “processes for fraud investigations, including process for the identification and recordation of fraud.” Mot. to Compel at 11. The Government asserted that it was unaware of any such manuals. Pl. Consol. Resp. at 13. At the March 2021 Status Conference, the Government confirmed that it was still unaware of such manuals after inquiring within the Government about the existence of any fraud investigation instructive manuals. Mar. Status Conf. at 59:05–1:00:17, 1:09:00–05. Defendants’ counsel claimed that it had received government instructive manuals previously in other litigations. *Id.* at 1:03:00–19. The court has not seen any such evidence provided by any parties in this case. Counsel for the Government reiterated that any such documents do not exist to the best of counsel’s knowledge and argued in the alternative that, if such manuals did exist, Plaintiff would assert privilege over them. *Id.* at 1:09:00–28.

The Government represented in court filings and at the March 2021 Status Conference on the record that it did not have knowledge of or possession of government instructive manuals regarding fraud investigations responsive to Defendants’ request. Because the court has not seen any evidence of the existence of government instructive manuals presented by either Plaintiff or Defendants, and the Government’s counsel confirmed on the record that it does not have any such documents, the court has no reason to doubt the veracity of the Government’s assertion that it does not have knowledge of or possession of any government instructive manuals regarding fraud, absent evidence to the contrary. The court concludes that while Defendants’ request may be relevant to the issues in the case, discovery of government fraud instructive manuals is outside the scope of the Government’s relative access to the information under USCIT Rule 26(b)(1). The court will not compel Plaintiff to produce documents that counsel has explained do not exist. The Motion to Compel is denied in part regarding government instructive manuals.

D. Previously Produced Documents

Defendants stated that Plaintiff objected to Defendants' interrogatories "on the basis that [D]efendants [were] already in possession of the requested evidence." Mot. to Compel at 15. During the March 2021 Status Conference, the Government explained that it had produced all non-privileged requested documents previously to Defendants. Mar. Status Conf. at 1:13:12–14:45, 1:15:20–17:17; *see also* Pl. Consol. Resp. Ex. 7. Upon this representation, Defendants withdrew their request for previously produced documents. Mar. Status Conf. at 1:14:50–15:08.

E. Other Critical Documents

Defendants requested "other critical documents" related to customs brokers and "native format." Mot. to Compel at 17. Plaintiff stated that it produced all non-privileged, responsive documents to Defendants. Pl. Consol. Resp. at 10.

1. Documents Related to Customs Brokers

During the March 2021 Status Conference, Defendants stated initially that Plaintiff did not respond to their request for documents related to customs brokers; upon further discussion, Defendants clarified that the Government had identified too many responsive documents, and instead Defendants requested that the Government identify a subset of the most relevant information related to customs brokers within the range of responsive documents. *Id.* at 1:17:36–18:15, 1:30:47–31:24. Plaintiff cited correspondence with Defendants' counsel that identified a range of responsive documents and asserted that each document related directly to Defendants' requests. *Id.* at 1:21:10–22:20, 1:31:30–32:40; *see also* Pl. Consol. Resp. Ex. 7.

The court will limit discovery if it determines that the discovery sought can be obtained from some other source that is less burdensome. USCIT R. 26(b)(2)(C)(i). Upon review of Plaintiff's response to Defendants, the court observes that the Government identified approximately 3,100 pages of responsive documents that relate to customs brokers, which does not appear to be unreasonable considering that this is a customs fraud case involving potential duties, fees, and penalties of nearly \$3.5 million. Pl. Consol. Resp. Ex. 7; *see also* Second Am. Compl. ¶ 1. The universe of approximately 3,100 pages of responsive documents is not too burdensome for Defendants' law firm to review without further assistance from the Government. Indeed, that is the nature of litigation. Balancing whether the court should compel the Government to identify which of the approximately 3,100 pages of documents contain the most relevant information about

customs brokers, as opposed to requiring Defendants' law firm to review those responsive documents already produced, the court concludes that it is less burdensome for Defendants' counsel to review the responsive document production on its own. The court will not compel the Government to assist Defendants' counsel by choosing a subset of the most relevant documents related to customs brokers from among the responsive documents already produced to Defendants. The Motion to Compel is denied in part regarding documents related to customs brokers.

2. Documents in "Native Format"

Defendants requested that Plaintiff produce replacement copies of illegible documents that were marked as "native format," and Plaintiff clarified that a technological error caused these documents to be illegible. Plaintiff offered to cure the problem by producing correctly formatted, legible replacement documents to Defendants. *See* Mar. Status Conf. at 1:32:57–33:44; *see also* Mot. to Compel at 18 (requesting new versions of US0004044, US0004047, and US0004105). The Motion to Compel is granted in part with respect to "native format" documents.

IV. Motion to Amend Scheduling Order

Defendants requested a five-month extension to produce and review additional documents, prepare for and complete fact and expert depositions, and propound requests for admission. Defs. Mot. to Amend at 1–2. Plaintiff objected to an extension and sought to maintain the expedited deadlines set forth in Scheduling Order, ECF No. 142. Pl. Consol. Resp. at 8–9. Plaintiff asserted that requests for admission were submitted in 2017. Mar. Status Conf. at 1:44:32–50. The court notes that Defendants' current counsel first appeared in this case nearly two years ago in April of 2019, after replacing several former counsel for Defendants. *See* Form 11 Notice of Appearance, ECF Nos. 114, 125. Defendants' current counsel is certainly not new to the case and has had nearly two years to become familiar with the facts, but the court recognizes that Defendants have not had an opportunity to submit requests for admission after the Second Amended Complaint was filed in January 2020. In the alternative, Plaintiff requested that an extension of no more than three additional weeks be granted. Mar. Status Conf. at 1:43:47–44:03.

USCIT Rule 16(b)(4) states that a schedule may be modified only for good cause and with the court's consent. USCIT R. 16(b)(4). This case has been pending before the court since 2017, with the alleged fraudulent activity taking place between 2007 and 2011, beginning

more than fourteen years ago. The court is committed to expediting this matter as quickly as possible to reach a resolution.

The court will provide the Parties with an opportunity to produce additional documents, depose fact and expert witnesses, and submit requests for admission, but will not delay the schedule by an additional five months as requested by Defendants. The court will grant an extension of approximately two and a half months for additional discovery. USCIT Rule 36(a)(3) provides broad discretion to the court to manage its docket and issue scheduling orders accordingly. *See* USCIT R. 36(a)(3); *see also Murata Mach. USA v. Daifuku Co.*, 830 F.3d 1357, 1362 (Fed. Cir. 2016) (“The Supreme Court has long recognized that district courts have broad discretion to manage their dockets”); *Amado v. Microsoft Corp.*, 517 F.3d 1353, 1358 (Fed. Cir. 2008) (recognizing the broad discretion given to district courts to manage their dockets). The Motion to Amend Scheduling Order is granted in part.

Upon consideration of the Motion for Protective Order, Motion to Compel, and Motion to Amend Scheduling Order, all other papers and proceedings in this action, and pursuant to USCIT Rules 16, 26, and 36, it is hereby

ORDERED that Defendants’ Motion for Protective Order is granted; and it is further

ORDERED that Defendants’ Motion to Compel is granted in part and denied in part; and it is further

ORDERED that Plaintiff shall produce legible versions of the “native format” documents to Defendants on or before April 2, 2021; and it is further

ORDERED that Defendants shall produce any additional documents to Plaintiff on or before April 2, 2021; and it is further

ORDERED that Defendants’ Motion to Amend Scheduling Order is granted in part, and it is further

ORDERED that Scheduling Order, Sept. 28, 2020, ECF No. 142, is superseded by this order; and it is further

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

1. Discovery shall be completed on or before June 18, 2021;
 - a. Any remaining documents shall be produced on or before April 2, 2021;
 - b. Depositions of fact witnesses shall occur remotely via videoconference and shall be completed on or before April 23, 2021;

- c. Designation of experts, exchange of expert reports, and remote depositions of expert witnesses via videoconference shall be completed on or before May 21, 2021;
 - d. Any requests for admission shall be served on opposing counsel on or before June 4, 2021;
 - e. Responses to any requests for admission shall be served on opposing counsel on or before June 18, 2021;
2. Dispositive motions, if any, shall be filed on or before August 6, 2021; and
 3. Briefs in response to dispositive motions shall be filed on or before August 20, 2021, and a brief in response to a dispositive motion may include a dispositive cross-motion;
 4. Reply briefs and briefs in response to a dispositive cross-motion shall be filed on or before August 27, 2021; and
 5. If no dispositive motions are filed, a request for trial, if any, accompanied by a proposed order governing preparation for trial, shall be filed on or before August 6, 2021.

No further extensions regarding discovery will be granted unless there is a need to address unexpected conflicts. The Parties should seek to limit such extension requests for unexpected conflicts to short periods of time.

Dated: March 30, 2021

New York, New York

/s/ Jennifer Choe-Groves

JENNIFER CHOE-GROVES, JUDGE

Index

Customs Bulletin and Decisions
Vol. 55, No. 14, April 14, 2021

U.S. Customs and Border Protection CBP Decisions

	CBP No.	Page
Imposition of Import Restrictions on Categories of Archaeological Material of Costa Rica	21-06	1
Notice of Finding That Certain Disposable Gloves Produced in Malaysia With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely To Be, Imported Into the United States	21-08	13

General Notices

	Page
Proposed Modification of One Ruling Letter and Proposed Revocation of Treatment Relating to the Tariff Classification of Air Springs	16
Application for Identification Card	24
Copyright, Trademark, and Trade Name Recordations (No. 02 2021)	27

U.S. Court of Appeals for the Federal Circuit

	Appeal No.	Page
Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S., Plaintiff-Appellant v. United States, Rebar Trade Action Coalition, Defendants-Appellees	2020-1506	39

U.S. Court of International Trade Slip Opinions

	Slip Op. No.	Page
New American Keg, d/b/a American Keg Company, Plaintiff, v. United States, Defendant, and Ningbo Master International Trade Co., Ltd., and Guangzhou Jingye Machinery Co, Ltd, Defendant-Intervenors.	21-30	49
United States, Plaintiff, v. Greenlight Organic, Inc. and Pambir Singh Aulakh, Defendants.	21-34	81