

U.S. Customs and Border Protection



19 CFR PART 177

REVOCAION OF ONE RULING LETTER AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A THERMOELETRIC WINE COOLER DISPLAY CABINET

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

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of a thermoelectric wine cooler display cabinet.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the tariff classification of a thermoelectric wine cooler display cabinet under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 54, No. 51, on December 20, 2020. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 25, 2021.

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), a notice was published in the *Customs Bulletin*, Vol. 54, No. 51, on December 20, 2020, proposing to revoke one ruling letter pertaining to the tariff classification of a thermoelectric wine cooler display cabinet. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter ("NY") N300132, dated September 11, 2018, CBP classified a thermoelectric wine cooler display cabinet in heading 8418, Harmonized Tariff Schedule of the United States (HTSUS), specifically subheading 8418.69.01, HTSUS, which provides for "[R]efrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415; Parts thereof; Other refrigerating or freezing equipment; Other." CBP has reviewed NY N300132 and has determined the ruling letter to be in error. It is now CBP's position that a thermoelectric wine cooler display cabinet is properly classified, in heading 8418, HTSUS, specifically under subheading 8418.50.00, HTSUS, which provides for "[R]efrigerators, freezers and

other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415; Parts thereof; Other furniture (chests, cabinets, display counters, show-cases and the like) for storage and display, incorporating refrigerating or freezing equipment.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N300132 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H304964, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated:

GREGORY CONNOR
for

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H304964

February 9, 2021

OT:RR:CTF:EMAIN H304964 SKK

CATEGORY: Classification

TARIFF NO.: 8418.50.00

MR. RANDY RUCKER
DRINKER BIDDLE & REATH LLP
191 N. WACKER DR., STE. 3700
CHICAGO, IL 60606

RE: Revocation of NY N300132; Tariff classification of a thermoelectric wine cooler

DEAR MR. RUCKER:

This ruling is in reference to your email correspondence of April 11, 2019, in which you request reconsideration of New York Ruling Letter (NY) N300132, dated September 11, 2018, in which U.S. Customs and Border Protection (CBP) classified a thermoelectric wine cooler under heading 8418, Harmonized Tariff Schedule of the United States (HTSUS), specifically sub-heading 8418.69.01, HTSUS, which provides for “[R]efrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415; Parts thereof; Other refrigerating or freezing equipment; Other.”

Upon reconsideration, we have determined that the tariff classification of the subject merchandise at issue in NY N300132 is incorrect. Pursuant to the analysis set forth below, CBP is revoking NY N300132.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke NY N300132 was published on December 20, 2020, in Volume 54, Number 51 of the Customs Bulletin. No comments were received in response to the proposed action.

FACTS:

The product at issue in NY N300132 is the Avanti Wine Cooler (item #EWC1201), SKU number 149466. The household cooler employs a thermoelectric cooling system and is designed to store up to 12 wine bottles in a horizontal and a standing position. The cooler features slide out shelves, a curved glass door, an interior light and an LED digital display. The Avanti Wine Cooler measures 10 inches in width by 25.2 inches in height.



LAW AND ANALYSIS:

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

GRI 6 provides as follows:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative section and chapter notes also apply, unless the context otherwise requires.

It is undisputed that the subject merchandise is properly classified under heading 8418, HTS, provides for, *inter alia*, “electric refrigerators and other refrigerating equipment”. The determinative issue is at the six-digit level of heading 8418, HTSUS; specifically, whether the subject apparatus is classified under subheading 8418.50, HTSUS, as “other furniture (chests, cabinets, display counters, show-cases and the like) for storage and display, incorporating refrigerating or freezing equipment,” or under subheading 8418.69, HTSUS, as “other refrigerating or freezing equipment.”

Several online retail sources describe the subject merchandise as follows:

10 Inch Countertop Wine Cooler with 12 Bottle Capacity, Wire Racks, Thermoelectric Cooling, No Vibration, Curved Glass Door and Integrated Soft Touch Digital Display.

See <https://www.ajmadison.com/cgi-bin/ajmadison/EWC1201.html> (site last visited November, 2020).

The Avanti 12-Bottle Wine Cooler boasts a black cabinet and concave glass door that make it a stylish addition to any kitchen. With its compact, freestanding design, it fits easily in tight spaces, measuring just over 24 in. wide. Despite its size, it holds up to 12 bottles of wine on its slide-out chrome shelves, with a no-vibration design to carefully preserve the wine.

See <https://www.homedepot.com/p/Avanti-12-Bottle-Wine-Cooler-EWC1201/308062501> (site last visited November, 2020).

As the subject merchandise is a counter-top cabinet that stores, displays and refrigerates wine bottles, classification is proper under subheading 8418.50, HTSUS. See NY N301170, dated February 6, 2019, in which CBP classified the same merchandise (Avanti Wine Cooler (item #EWC1201)) under subheading 8418.50.00, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the Avanti Wine Cooler (item #EWC1201, SKU number 149466) at issue in NY N300132 is classified under heading 8418, HTS, specifically under subheading 8418.50.00, HTSUS, which provides for “[R]efrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines

of heading 8415; Parts thereof; Other furniture (chests, cabinets, display counters, show-cases and the like) for storage and display, incorporating refrigerating or freezing equipment.”

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

EFFECT ON OTHER RULINGS:

NY N300132, dated September 11, 2018, is hereby REVOKED.

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

Sincerely,

GREGORY CONNOR

for

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

CC: Ms. Laurel Talan Scapicchio
BJ's Wholesale Club, Inc.
25 Research Drive
P.O. Box 5230
Westborough, MA 01581



**PROPOSED MODIFICATION OF TWO RULING LETTERS,
PROPOSED REVOCATION OF FIVE RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF TABLET AND E-READER
COVERS**

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

ACTION: Notice of proposed modification of two ruling letters, proposed revocation of five ruling letters, and revocation of treatment relating to the tariff classification of tablet and e-reader covers.

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 two ruling letters and revoke five ruling letters concerning tariff classification of tablet and e-reader covers 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 March 26, 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: Arim J. Kim, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0266.

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 two ruling letters and revoke five ruling letters pertaining to the tariff classification of tablet and e-reader covers. Although in this notice, CBP is specifically referring to New York Ruling Letters (NY) N150305, dated March 25, 2011 (Attachment A); NY N208195, dated April 6, 2012 (Attachment B);

NY N209825, dated April 10, 2012 (Attachment C); NY N223955, dated July 25, 2012 (Attachment D); NY N225563, dated August 1, 2012 (Attachment E); NY N225565, dated August 1, 2012 (Attachment F); and N227736, dated August 24, 2012 (Attachment G), 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 seven 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 N150305, NY N208195, NY N209825, NY N223955, NY N225563, NY N225565, and NY N227736, CBP classified tablet and e-reader covers in heading 3926, HTSUS, specifically in subheading 3926.10.0000, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies." CBP has reviewed NY N150305, NY N208195, NY N209825, NY N223955, NY N225563, NY N225565, and NY N227736, and has determined the ruling letters to be in error. It is now CBP's position that tablet and e-reader covers are properly classified, in heading 3926, HTSUS, specifically in subheading 3926.90.9990, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N150305 and NY N208195, to revoke NY N209825, NY N223955, NY N225563, NY N225565, and NY N227736, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (HQ) H295585, set forth as Attachment H 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.

Dated:

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

N150305

March 25, 2011

CLA-2-39:OT:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO.: 3926.10.0000; 4205.00.8000

MS. HALEY BARSHIS
JAMES J. BOYLE & CO.
7505 NE AMBASSADOR PLACE, SUITE B
PORTLAND, OR 97220

RE: The tariff classification of bifold covers from China

DEAR MS. BARSHIS:

In your letter dated February 23, 2011, on behalf of Cyber Acoustics, LLC., Washington, you requested a tariff classification ruling.

Four samples were included with your request. All are book cover style bifold covers for electronic devices such as an iPad, electronic reader or tablet. Item #8419A is a cover that measures approximately 10 inches by 8 inches. You did not specify in your letter a specific device for which this was intended nor was packaging provided for this style. The exterior is composed predominantly of cellular plastic sheeting that is backed with a uniformly dyed plain woven textile fabric for mere reinforcement. This type of laminated construction is considered to be of plastics for tariff purposes. The exterior also contains a smaller panel of printed textile fabric. The cover is lined with textile fabric and the lined interior includes a plastic business card pocket. In between the exterior and interior layers there is a plastic stiffener layer, a paperboard layer for additional support and a foamed plastic layer for cushioning. The right side of the interior is fitted with a semi-rigid silicone plastic frame that holds the device in place. The left side is fitted with an elastic strap which you state is used to hold the cover open or closed. The cover can be folded in such a way so as to form a stand for the device to better facilitate typing, reading, or watching videos. The essential character of this cover/stand is imparted by the plastic exterior, support and frame.

A second sample, which is not identified by style number, is identical in all material respects to item #8419A except the exterior consists solely of unreinforced cellular plastic sheeting with no textile backing and no textile panel. The interior does not include the business card pocket.

Item #KC-3000BK is a bifold cover for an electronic reader. The cover measures 8 inches by 5¼ inches and has a leather exterior. The interior is fitted with a silicone plastic frame for the device on one side and an elastic strap on the other side. The cover can be folded to form a stand for the device. The essential character of this cover/stand is imparted by the leather exterior.

Item #SG-3050BK is a bifold cover for a tablet-type device. The cover measures 7¼ inches by 5¼ inches and has a leather exterior. The interior is fitted with a silicone plastic frame for the device on one side and an elastic strap on the other side. The cover can be folded to form a stand for the device. The essential character of this cover/stand is imparted by the leather exterior.

The samples are being returned as you requested. Please note that some of the samples were damaged during examination.

The applicable subheading for the two plastic bifold covers/stands, item 8419A and the similar cover that is not identified by style number, will be 3926.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics...office or school supplies. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the leather covers, items KC-3000BK and SG-3050BK, will be 4205.00.8000, HTSUS, which provides for other articles of leather or of composition leather, other, other, other. The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at (646) 733-3023.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

N208195

April 6, 2012

CLA-2-39:OT:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO.: 3926.10.0000; 3926.90.9980

MR. MARC D. TORRENCE
V. ALEXANDER & COMPANY, INC.
P.O. BOX 291929
NASHVILLE, TN 37229

RE: The tariff classification of iPad cases and iPhone back covers
from China

DEAR MR. TORRENCE:

In your letter dated February 28, 2012, on behalf of LuxMobile Group LLC, you requested a tariff classification ruling.

Item #1 is a bifold cover for an iPad. The interior is formed with a small curved tab at each corner to secure the electronic device. Although you describe the product as being made of particle board wrapped in polyurethane, the cover was peeled apart and found to have a supporting structure of plastics rather than particle board. The cover is lined with textile fabric and the exterior consists of polyurethane plastic sheeting. The essential character is imparted by the combination of the plastic supporting structure and the exterior polyurethane plastic sheeting.

Items 2, 3, 4 and 5 are protective shells designed to snap onto the back of an iPhone. Each is composed of molded acrylonitrile butadiene styrene (ABS) plastic. Item 2, also identified as Tiger, is printed with the image of a tiger head and is decorated with imitation gemstones that have been glued to the plastic shell. Item 3, also identified as Queen, is printed with images of jewels, feathers and lace. Item 4, also identified as Tiger Black, is wrapped with a printed polyurethane sheeting material that is embossed with the image of the head of a tiger. Item 5, also identified as Tangerine Skies, is wrapped with a nylon fabric that is printed with a yellow and orange floral design. Each of these four shells is essentially flat with two curved sides to enclose the two long edges of the phone. The back incorporates an oval cut-out for the camera lens and one of the curved sides incorporates a cut-out to provide access to other controls. The shells do not have transverse sides to protect the short edges of the phone, and they do not extend over any portion of the front of the phone, leaving the entire face and two sides of the phone completely exposed. They are in the nature of a back cover for the phones.

All of the samples are being returned as you requested. However, please note that the bifold iPad cover was destroyed during analysis.

The applicable subheading for item 1, the bifold iPad cover, will be 3926.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics...office or school supplies. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for items 2-5, the molded plastic protective back covers for iPhones, will be 3926.90.9980, HTSUS, which provides for other articles of plastics, other. The rate of duty will be 5.3 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at (646) 733-3023.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

N209825

April 10, 2012

CLA-2-39:OT:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO.: 3926.10.0000

Ms. JENNIFER DIAZ
BECKER & POLIAKOFF
121 ALHAMBRA PLAZA, 10TH FLOOR
CORAL GABLES, FL 33134

RE: The tariff classification of a bifold e-book cover from China

DEAR Ms. DIAZ:

In your letter dated March 14, 2012, on behalf of your client, Marware Inc., you requested a tariff classification ruling. A sample was provided with your letter and is being returned to you as requested.

The submitted sample, identified as the "MicroShell Folio," is a bifold book cover designed for an electronic reader or e-book. The cover measures 7½ inches by 4¾ inches in its folded condition. The case consists of a hard polycarbonate plastic back shell that is designed to hold the electronic reader. The front cover is made from a softer thermoplastic elastomer and is backed with a uniformly dyed textile fabric that forms the inner lining. The back shell features an elastic strap that can hold the cover securely closed or that can be used to secure the e-book to the back shell when the cover is open. The cover can also be folded to form a stand for the device.

The applicable subheading for the "MicroShell Folio" will be 3926.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics...office or school supplies. The rate of duty will be 5.3 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at (646) 733-3023.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

N223955

July 25, 2012

CLA-2-39:OT:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO.: 3926.10.0000

Ms. DENISE YOUNG-SANG
OFFICE DEPOT
6600 NORTH MILITARY TRAIL
BOCA RATON, FL 33496

RE: The tariff classification of an iPad cover from China

DEAR Ms. YOUNG-SANG:

In your letter dated June 26, 2012, you requested a tariff classification ruling.

The sample provided with your letter, identified as iPad case model #TNF-IP3-LC001, is a bi-fold cover for an iPad. The exterior of the cover is composed of cellular polyurethane sheeting backed with plain woven textile fabric reinforcement. The lining, which you identify as "micro suede," is cellular plastic sheeting backed with plain woven textile fabric reinforcement. In between the exterior and the lining there is a foam plastic cushioning layer and a paperboard stiffener. The interior of the cover includes three curved frame brackets made of molded plastics, one measuring 2 inches in length, one measuring 3 inches in length and one measuring 4 ¼ inches in length, that hold the iPad in place. The front and sides of the iPad, other than the side portions that fit within the curved frame brackets, are completely exposed when the cover is open. The iPad cover measures approximately 9 ½ inches by 7 ½ inches when closed and can be secured with a sewn-on elastic strap. The cover converts to a stand to hold the iPad at an angle for typing and viewing. There are two separate tabbed strips sewn several inches apart along the length of the inside cover to serve as a base for the iPad to rest on so that the user can choose between two different viewing angles.

As you requested, the sample will be returned. Please note that the sample was cut during examination.

The applicable subheading for the iPad cover/stand, model #TNF-IP3-LC001, will be 3926.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics...office or school supplies. The rate of duty will be 5.3 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at (646) 733-3023.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

N225563

August 1, 2012

CLA-2-39:OT:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO.: 3926.10.0000

Ms. JENNIFER R. DIAZ
BECKER & POLIAKOFF
121 ALHAMBRA PLAZA, 10TH FLOOR
CORAL GABLES, FL 33134

RE: The tariff classification of a MicroShell Folio iPad 3 cover/stand
from China

DEAR Ms. DIAZ:

In your letter dated July 10, 2012, on behalf of Marware, Inc., you requested a tariff classification ruling. A sample was submitted with your letter and will be returned as requested.

The MicroShell Folio, item number AHMF11, is a folding cover/stand for an iPad 3. The back portion of the cover is made of rigid polycarbonate plastic designed to snap onto the back of an iPad 3. The shell is essentially flat with sides that curve slightly inward so they can snap onto the edges of the device. The back shell incorporates a small cut-out for the camera lens. The front portion of the cover protects the face of the iPad. The front portion is scored to form three semi-rigid sections. This design allows it to be folded backwards and secured into either of two grooves at the back of the hard shell to form a stand. The two grooves allow the device to be held at two different viewing angles.

The applicable subheading for the MicroShell Folio iPad 3 folding cover/stand, item number AHMF11, will be 3926.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics...office or school supplies. The rate of duty will be 5.3 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at (646) 733-3023.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

N225565

August 1, 2012

CLA-2-39:OT:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO.: 3926.10.0000

Ms. JENNIFER R. DIAZ
BECKER & POLIAKOFF
121 ALHAMBRA PLAZA, 10TH FLOOR
CORAL GABLES, FL 33134

RE: The tariff classification of an electronic reader cover from China

DEAR Ms. DIAZ:

In your letter dated July 10, 2012, on behalf of Marware, Inc., you requested a tariff classification ruling.

The sample submitted with your request, identified as Atlas KGAT11, is a folding cover for an electronic reader. The product measures approximately 5 inches by 7 inches in its closed condition and has the design, style and function of a book cover or reading jacket. The exterior consists of cellular polyurethane plastic sheeting backed with plain knit textile fabric reinforcement. The interior lining consists of "micro suede" textile fabric and there is a cardboard stiffener between the exterior and the lining. There are four corner elastic straps to secure the electronic reader to the inside cover and a vertical elastic strap to secure the lid open or closed. The cover has a wide hand strap on the inside of the front lid that allows for one handed reading when the front lid is folded back, the thin elastic strap is used to secure the front lid in the open position and the reader's hand is slid inside the hand strap.

The sample is being returned as you requested. Please note, however, that it was damaged during examination.

The applicable subheading for the electronic reader cover, Atlas KGAT11, will be 3926.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics...office or school supplies. The rate of duty will be 5.3 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at (646) 733-3023.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

N227736

August 24, 2012

CLA-2-39:OT:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO.: 3926.10.0000

MS. JENNIFER R. DIAZ
BECKER & POLIAKOFF
121 ALHAMBRA PLAZA, 10TH FLOOR
CORAL GABLES, FL 33134

RE: The tariff classification of an iPad cover/stand from China

DEAR MS. DIAZ:

In your letter dated July 24, 2012, on behalf of Marware, Inc., you requested a tariff classification ruling.

The sample submitted with your request, identified as the C.E.O. Hybrid, product AHHB1P, is a folding cover/stand for the iPad 2nd and 3rd generation. The C.E.O. Hybrid serves as a protective cover or jacket for the iPad. It measures approximately 7-1/4 inches by 9-1/2 inches in its closed condition and can be secured by means of a thin elastic strap sewn to the inside front cover. The rigid back is essentially flat with tabs that curve slightly inward so that the iPad can be secured into the tabs. The back section incorporates a small cut-out for the camera lens. The front and sides of the iPad, other than the side portions that fit within the curved tabs, are completely exposed when the cover is open. The front cover protects the face of the iPad when the cover is closed. A wide hand strap sewn onto the inside of the front cover allows for secure one handed viewing when the front lid is folded back and the reader's hand is slid inside the hand strap.

The cover converts to a stand to hold the iPad at an angle for either typing or viewing. There are two separate grooves located one inch apart from each other on the inside front cover. To transform the cover into a stand, the bottom of the iPad is released from the two tabs securing it to the back cover and the back cover is folded at the scored center. The top of the iPad remains secured in the tabs on the back cover while the base of the iPad is nestled into one of the two grooves on the front cover. The grooves serve as a support for the iPad and allow the user to choose between two different viewing angles, a low angle for typing or a high angle for display.

The cover/stand is constructed of molded polycarbonate plastic that is covered on the exterior with cellular polyurethane plastic sheeting backed with plain woven textile fabric for mere reinforcement. The lining, which you describe as "micro suede," is cellular sponge plastic sheeting backed with nonwoven textile fabric for mere reinforcement. Both the cellular polyurethane laminate on the exterior and the cellular sponge plastic lining material are considered to be of chapter 39 plastics for tariff purposes. There are also some cushioning layers of cellular foam plastic in between the shell and the lining in the front cover.

The sample is being returned as you requested. However, please note that the sample was cut during examination.

The applicable subheading for the C.E.O. Hybrid folding cover/stand for the iPad, product AHHB1P, will be 3926.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics...office or school supplies. The rate of duty will be 5.3 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at (646) 733-3023.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

H295585

January 22, 2021

OT:RR:CTF:CPMMA H295585 AJK

CATEGORY: Classification

TARIFF NO: 3926.90.99

MS. JENNIFER R. DIAZ
BECKER & POLIAKOFF
121 ALHAMBRA PLAZA, 10TH FLOOR
CORAL GABLES, FL 33134

RE: Modification of NY N150305 and NY N208195; Revocation of NY N209825, NY N223955, NY N225563, NY N225565, and NY N227736; Tariff Classification of Plastic Tablet and E-reader Covers

DEAR MS. DIAZ,

This letter is in reference to New York Ruling Letters (NY) N150305, dated March 25, 2011; NY N208195, dated April 6, 2012; NY N209825, dated April 10, 2012; NY N223955, dated July 25, 2012; NY N225563, dated August 1, 2012; NY N225565, dated August 1, 2012; and N227736, dated August 24, 2012, concerning the tariff classification of plastic tablet and e-reader covers. In the aforementioned rulings, U.S. Customs and Broder Protection (CBP) classified tablet and e-cover readers in subheading 3926.10, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed the aforementioned rulings, and have determined that the classification was incorrect.¹

FACTS:

NY N227736 states the following, in relevant part:

[T]he C.E.O. Hybrid, product AHHB1P[] is a folding cover/stand for the iPad 2nd and 3rd generation. The C.E.O. Hybrid serves as a protective cover or jacket for the iPad. It measures approximately 7–1/4 inches by 9–1/2 inches in its closed condition and can be secured by means of a thin elastic strap sewn to the inside front cover. The rigid back is essentially flat with tabs that curve slightly inward so that the iPad can be secured into the tabs. The back section incorporates a small cut-out for the camera lens. The front and sides of the iPad, other than the side portions that fit within the curved tabs, are completely exposed when the cover is open. The front cover protects the face of the iPad when the cover is closed. A wide hand strap sewn onto the inside of the front cover allows for secure one handed viewing when the front lid is folded back and the reader's hand is slid inside the hand strap.

The cover converts to a stand to hold the iPad at an angle for either typing or viewing. There are two separate grooves located one inch apart from each other on the inside front cover. To transform the cover into a stand, the bottom of the iPad is released from the two tabs securing it to the back cover and the back cover is folded at the scored center. The top of the iPad remains secured in the tabs on the back cover while the base of the iPad

¹ NY N150944, dated March 28, 2011, and NY N102216, dated May 6, 2010, concern substantially similar products that were classified under heading 4202. Those rulings have been revoked as a matter of law by the decision in *Otter Prods., LLC v. United States*. 70 F. Supp. 3d 1281 (Ct. Int'l Trade 2015), *aff'd*, 834 F.3d 1369 (Fed. Cir. 2016).

is nestled into one of the two grooves on the front cover. The grooves serve as a support for the iPad and allow the user to choose between two different viewing angles, a low angle for typing or a high angle for display.

The cover/stand is constructed of molded polycarbonate plastic that is covered on the exterior with cellular polyurethane plastic sheeting backed with plain woven textile fabric for mere reinforcement. The lining, which you describe as “micro suede,” is cellular sponge plastic sheeting backed with nonwoven textile fabric for mere reinforcement. Both the cellular polyurethane laminate on the exterior and the cellular sponge plastic lining material are considered to be of chapter 39 plastics for tariff purposes. There are also some cushioning layers of cellular foam plastic in between the shell and the lining in the front cover.

The products described in NY N150305, NY N208195, NY N209825, NY N223955, NY N225563, and NY N225565 are substantially similar to the product described above.

ISSUE:

Whether the tablet and e-reader covers are classified as in subheading 3926.10, HTSUS, as plastic office or school supplies, or subheading 3926.90, HTSUS, as other articles of plastic.

LAW AND ANALYSIS:

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

* * * * *

The HTSUS provisions at issue are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.10.00	Office or school supplies
3926.90	Other:
3926.90.99	Other

* * * * *

Pursuant to GRI 1, the plastic tablets and e-reader covers are classified under heading 3926, HTSUS, because they constitute “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914” and they are not more specifically provided for under other headings. On the subheading level, however, we find that the tablet and e-reader covers are not classifiable in subheading 3926.10, HTSUS, which provides for plastic office or school supplies. Subheading 3926.10, HTSUS, is a principle use provision and therefore subject to the Additional U.S. Rule of Interpretation 1(a), which states:

1. In the absence of special language or context which otherwise requires

a. a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use....

Generally, tablets and e-readers can be used in myriad locations for various purposes beyond “office or school”. The fact that buyers purchase covers and cases for these devices further support the fact that the tablets and e-readers are portable items which are not confined to a specific location or use, such as “office or school”. Tablets can be used for social media, games, online shopping, and many other non-work or school related activities. Similarly, e-readers can be used for personal reading pleasure beyond work or school settings. Moreover, retail stores typically advertise tablets and e-readers as electronic devices for entertainment or personal use. For example, Best Buy advertises iPad as “[p]ortable, powerful and easy-to-use tablets ... [to] enjoy your favorite entertainment nearly anywhere” and further states that iPad can “download content from the huge selection of apps, games, music, books and movies”² Similarly, Amazon advertises that Amazon Fire 7—an e-reader—can be utilized to “[e]njoy millions of movies, TV shows, songs, Kindle eBooks, apps and games” and showcases its portability by stating that it is “now thinner, lighter, and with longer battery life”.³ Amazon does not explicitly identify any office or school uses for Amazon Fire 7. As evidenced by the actual use and advertisement of tablets and e-readers, the instant tablet and e-reader covers do not constitute office or school supplies.

This analysis is in accordance with the recent court decisions in *Otter Prods., LLC v. United States*⁴ and *Apple Inc. v. United States*.⁵ In *Otter Prods.*, the U.S. Court of Appeals for the Federal Circuit classified two styles of durable and protective cases designed for certain types of cell phones in subheading 3926.90.99, HTSUS. The Federal Circuit held that “at the subheading level, subheadings 3926.10 to 3926.40 ... do not apply *prima facie* to the subject merchandise.”⁶ In *Apple Inc. v. United States*, the Court of International Trade held that a “smart cover” for iPad 2, which consisted of a plastic outer layer, a microfiber lining, aluminum hinge and magnets, was a composite good with an essential character of plastic because the plastic portion “protects the screen” and thus, classified the product in subheading 3926.90, HTSUS.⁷ Pursuant to GRI 1 and 6, therefore, subheading 3926.90, HTSUS, which provides for other articles of plastic, is the only subheading that wholly covers the instant tablet and e-reader covers.

² See *iPad*, Best Buy, <https://www.bestbuy.com/site/ipad-tablets-ereaders/ipad/pcmcat209000050007.c?id=pcmcat209000050007> (last visited Mar. 30, 2018).

³ See *Fire 7*, Amazon, https://www.amazon.com/All-New-Amazon-Fire-7-Tablet/dp/B01GEW27DA/ref=zg_bs_1232597011_1/141-6390163-2474802?encoding=UTF8&psc=1&refRID=TM3HC6YMX57RV4ZYER5Q (last visited Mar. 30, 2018).

⁴ 70 F. Supp. 3d 1281 (Ct. Int’l Trade 2015), *aff’d*, 834 F.3d 1369 (Fed. Cir. 2016).

⁵ 375 F. Supp. 3d 1288 (Ct. Int’l Trade 2019), *aff’d*, 964 F.3d 1087 (Fed. Cir. 2020).

⁶ *Otter Prods., LLC v. United States*, 70 F. Supp. 3d 1281, 1295 (Ct. Int’l Trade 2015), *aff’d*, 834 F.3d 1369 (Fed. Cir. 2016).

⁷ See *Apple Inc.*, 375 F. Supp. 3d at 1304.

HOLDING:

By application of GRI 1, the subject tablet and e-reader covers are classified in heading 3926, HTSUS, specifically subheading 3926.90.99, HTSUS, which provides for “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: [o]ther: [o]ther: [o]ther”. The 2021 column one general rate of duty is 5.3% *ad valorem*. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

NY N150305, dated March 25, 2011 and NY N208195, dated April 6, 2012 are modified. NY N209825, dated April 10, 2012; NY N223955, dated July 25, 2012; NY N225563, dated August 1, 2012; NY N225565, dated August 1, 2012; and N227736, dated August 24, 2012, are hereby revoked.

Sincerely,

for

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

Cc:

Ms. Denise Young-Sang
Office Depot
6600 North Military Trail
Boca Raton, FL 33496

Ms. Haley Barshis
James J. Boyle & Co.
7505 NE Ambassador Place, Suite B
Portland, OR 97220

Mr. Marc D. Torrence
V. Alexander & Company, Inc.
P.O. Box 291929
Nashville, TN 37229



**DOCUMENTATION REQUIREMENTS FOR ARTICLES
ENTERED UNDER VARIOUS SPECIAL TARIFF
TREATMENT PROVISIONS**

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

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act

of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 15, 2021) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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 proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 73495) on November 18, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. 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: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions.

OMB Number: 1651–0067.

Current Actions: Extension.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: U.S. Customs and Border Protection (CBP) is responsible for determining whether imported articles that are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 9801.00.10, 9802.00.20, 9802.00.40, 9802.00.50, 9802.00.60 and 9817.00.40 are entitled to duty-free or reduced duty treatment. In order to file under these HTSUS provisions, importers, or their agents, must have the declarations that are provided for in 19 CFR 10.1(a), 10.8(a), 10.9(a) and 10.121 in their possession at the time of entry and submit them to CBP upon request. These declarations enable CBP to ascertain whether the requirements of these HTSUS provisions have been satisfied.

These requirements apply to the trade community who are familiar with CBP regulations and the tariff schedules.

Type of Information Collection: Declarations under Chapter 98.

Estimated Number of Respondents: 19,445.

Estimated Number of Annual Responses per Respondent: 3.

Estimated Number of Total Annual Responses: 58,335.

Estimated Time per Response: 1 minute (.016 hours).

Estimated Total Annual Burden Hours: 933.

Dated: February 8, 2021.

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

DECLARATION OF PERSON WHO PERFORMED REPAIRS OR ALTERATIONS

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

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

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

DATES: Comments are encouraged and must be submitted (no later than March 15, 2021) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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 the 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 proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 74741) on November 23, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. 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: Declaration of Person Who Performed Repairs or Alterations.

OMB Number: 1651-0048.

Current Actions: Extension.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The "Declaration of Person Who Performed Repairs or Alterations," as required by 19 CFR 10.8, is used in connection with the entry of articles entered under subheadings 9802.00.40 and 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS, <https://hts.usitc.gov/current>). Articles entered under these HTSUS provisions are articles that were temporarily exported from the United States for repairs and alterations, and are returned to the United States. Upon their return, duty is only assessed on the cost or value of the repairs or alterations performed abroad and not on the full value of the article. The declaration under 19 CFR 10.8 includes information, such as (1) a description of the article and the repairs or alterations; (2) the value of the article and the repairs or alterations; and (3) a declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts. The information in this declaration is used by CBP to determine the value of the repairs or alterations, and to assess duty only on the value of those repairs or alterations.

These requirements apply to the trade community who are required by law to provide this declaration.

*Type of Information Collection:***Estimated Number of Respondents:** 10,236.**Estimated Number of Annual Responses per Respondent:** 2.**Estimated Number of Total Annual Responses:** 20,472.**Estimated Time per Response:** 30 minutes (0.5 hours).**Estimated Total Annual Burden Hours:** 10,236.

Dated: February 8, 2021.

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

[Published in the Federal Register, February 11, 2021 (85 FR 9082)]

U.S. Court of International Trade

Slip Op. 21–13

SHENZHEN XINBODA INDUSTRIAL CO., LTD., Plaintiff, v. UNITED STATES, Defendant, and FRESH GARLIC PRODUCERS ASSOCIATION et al., Defendant-Intervenors.

Before: Claire R. Kelly, Judge
Court No. 12–00174

[Sustaining the results of the U.S. Department of Commerce’s remand redetermination in the sixteenth administrative review of the antidumping duty order covering fresh garlic from the People’s Republic of China.]

Dated: February 8, 2021

Gregory S. Menegaz, J. Kevin Horgan, and Alexandra H. Salzman, deKieffer & Horgan, PLLC, of Washington, DC, for plaintiff.

Richard P. Schroeder, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for defendant. Also on the brief was *Reginald T. Blades, Jr.*, Assistant Director, *Jeanne E. Davidson*, Director, Jeffrey Bossert Clark, Acting Assistant Attorney General. Of counsel was *Brendan Saslow*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, DC.

Michael J. Coursey and John M. Herrmann, Kelley Drye & Warren LLP, of Washington, DC, for defendant-intervenors Fresh Garlic Producers Association, Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

OPINION

Kelly, Judge:

Before the court is the U.S. Department of Commerce’s (“Commerce”) remand redetermination pursuant to the court’s order in *Shenzhen Xinboda Indus. Co. v. United States*, 44 CIT __, __, 456 F. Supp. 3d 1272, 1291–92 (2020) (“*Shenzhen Xinboda I*”). See also Final Results of Redetermination Pursuant to Ct. Remand Order in [*Shenzhen Xinboda I*], July 16, 2020, ECF No. 56–1 (“*Remand Results*”). In *Shenzhen Xinboda I*, the court remanded in part Commerce’s final determination in the sixteenth administrative review of the antidumping duty (“ADD”) order covering fresh garlic from the People’s Republic of China (“PRC”). See *Shenzhen Xinboda I*, 44 CIT at __, 456 F. Supp. 3d at 1291–92. The court ruled that Commerce’s explanation for choosing Tata Tea’s financial data was unreasonable because Commerce did not confront evidence that the company is or may be the beneficiary of subsidies. See *id.* at 1290. Moreover, the court held that if Commerce’s practice is to rely on the financial statement of a company that is or may be the beneficiary of subsidies, so long as those subsidies were not previously found to be countervailable by

Commerce, Commerce should affirm its practice and explain why it is reasonable, particularly in this case where there is evidence that the financial statements contain countervailable subsidies. *See id.* at 1291. On remand, Commerce reconsiders its decision to rely on Tata Tea's unconsolidated financial statements to calculate Plaintiff, Shenzhen Xinboda Industrial Co., Ltd.'s ("Xinboda"), surrogate financial ratios. *See generally Remand Results*. Nonetheless, Commerce continues to rely on Tata Tea's financial statements, explaining that its practice is to disregard a financial statement only when the financial statement shows that the company received a previously determined countervailable subsidy, and that neither Tata Tea's financial statements, nor the loan documentation Xinboda submitted, show that Tata Tea received a previously determined countervailable subsidy. *See id.* at 5–9, 12–14, 16–18. Commerce also explains why the application of its practice is reasonable in this case. *See id.* at 6–9. For the following reasons, the court sustains Commerce's remand redetermination.

BACKGROUND

The court presumes familiarity with the facts of this case, as set out in its previous remand order, and now recounts the facts relevant to disposition of this action. *See Shenzhen Xinboda I*, 44 CIT at ___, 456 F. Supp. 3d at 1276–78. On December 28, 2010, Commerce initiated its sixteenth administrative review of the ADD order on fresh garlic from the PRC, for the period of review November 1, 2009 through October 31, 2010 ("POR"), at the request of FGPA and its individual members. *See Initiation of Antidumping and Countervailing Duty Admin. Reviews and Request for Revocation in Part*, 75 Fed. Reg. 81,565, 81,568–69 (Dep't Commerce Dec. 28, 2010). Commerce selected Xinboda and Golden Bird as mandatory respondents.¹ *See Fresh Garlic from [the PRC]*, 76 Fed. Reg. 76,375, 76,376 (Dep't Commerce Dec. 7, 2011) (prelim. results of the 2009–2010 [ADD] admin. review) ("*Prelim. Results*"), and accompanying Issues & Decision Memo for the [*Prelim. Results*], A-570–831, PD 134, (Nov. 30, 2011), ECF No. 54 ("*Prelim. Decision Memo*").²

¹ Initially, Commerce selected three additional exporters as mandatory respondents, but, following petitioners' withdrawals of their requests for review, Commerce rescinded review with respect to those exporters. *See Prelim. Results*, 76 Fed. Reg. at 76,375–76.

² During the sixteenth administrative review, Commerce switched from manual to electronic filings of the administrative record. Therefore, there are two indices, one manual and the other electronic, for the public and confidential documents. On February 19, 2020, Defendant electronically filed indices to the public and confidential administrative records underlying Commerce's remand redetermination, on the docket, at ECF Nos. 54 and 53, respectively. All further references to administrative record documents are identified by the numbers assigned by Commerce in those indices and preceded by "PD" and "CD" to denote public or confidential documents.

On June 11, 2012, Commerce published its final results. *See Fresh Garlic from the [PRC]*, 77 Fed. Reg. 34,346 (Dep't Commerce June 11, 2012) (final results of the 2009–2010 admin. review of the [ADD] order) (“*Final Results*”), and accompanying Issues & Decision Memo for the [*Final Results*], A-570–831, PD 220, (June 4, 2012), ECF No. 54 (“*Final Decision Memo*”). Given that Commerce considers the PRC to be a non-market economy (“NME”), Commerce calculated normal value by using India as the primary surrogate country to value factors of production (“FOPs”). *See* Prelim. Decision Memo at 10; Final Decision Memo at 3–6. Commerce relied on garlic prices from the APMC Bulletin, to value the garlic bulb input, because the APMC Bulletin prices were publicly available, specific to the input, largely contemporaneous with the POR, tax and duty exclusive, and represented a broad market average. *See* Final Decision Memo at 11–36. In addition, Commerce used Tata Tea’s financial statements to calculate Xinboda’s surrogate financial ratios, finding that its production processes—albeit of tea—were most similar to Xinboda’s fresh garlic processing. *See* Final Decision Memo at 40–45. Commerce found no evidence in the financial statements that indicated the company was in receipt of subsidies that Commerce previously determined to be countervailable. *See* Final Decision Memo at 42.

On April 17, 2020 the court remanded aspects of Commerce’s final determination for further explanation or reconsideration. *See Shenzhen Xinboda I*, 44 CIT at __, 456 F. Supp. 3d at 1291–92. *Shenzhen Xinboda I* held that Commerce’s explanation for relying on Tata Tea’s financial statements was not reasonable in light of evidence that indicated Tata Tea may have received subsidies. *See id.* at 1290. The court also remanded for Commerce to explain whether it has a practice to rely on the financial statement of a company that is or may be the beneficiary of subsidies, so long as those subsidies were not previously found by Commerce to be countervailable; and, if so, why it is reasonable to rely on such financial statements in this case, where there is evidence of countervailable subsidies in Tata Tea’s financial statements. *See id.* at 1291.

On remand, Commerce continues to rely on Tata Tea’s unconsolidated financial statements to calculate Xinboda’s surrogate financial ratios. Commerce explains that its practice is to only disregard financial statements when they contain explicit evidence of previously determined countervailable subsidies, *see Remand Results* at 5, and that here, there is no explicit evidence of previously determined countervailable subsidies in Tata Tea’s financial statements. *See id.* at 10–11. Nonetheless, Commerce considers the documentation Xin-

boda submitted as evidence of countervailable subsidies, and finds that those documents do not undermine its determination to use Tata Tea's financial statements. *See id.* at 11–18.

In response, Xinboda argues Commerce “shall” disregard financial statements where it has a “reason to believe or suspect” that the company received countervailable subsidies. *See* Pl. [Xinboda’s] Cmts. Opp. Commerce’s Remand Redetermination at 7, Aug. 17, 2019, ECF No. 58 (“Xinboda’s Br.”).³ According to Xinboda, Commerce’s stated practice of only disregarding financial statements that contain explicit evidence of countervailable subsidies is inconsistent with the reason to believe or suspect standard provided by the relevant legislative history. *See id.* Xinboda claims that the documentation it submitted (containing loan or hypothecation agreements) is more than sufficient as evidence to provide a reason to believe or suspect that Tata Tea received countervailable subsidies. *See id.* at 8–9.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to section 516A(a)(2)(B)(iii) of the Tariff Act of 1930, as amended 19 U.S.C. § 1516a(a)(2)(B)(iii) (2012),⁴ and 28 U.S.C. § 1581(c) (2012),⁵ which grant the court authority to review actions contesting the final determination in an administrative review of an ADD order. The court will uphold Commerce’s determination unless it is “unsupported by substantial evidence on the record, or otherwise not in accordance with law[.]” 19 U.S.C. § 1516a(b)(1)(B)(i). “The results of a redetermination pursuant to court remand are also reviewed ‘for compliance with the court’s remand order.’” *Xinjiaimei Furniture (Zhangzhou) Co. v. United States*, 38 CIT __, __, 968 F. Supp. 2d 1255, 1259 (2014) (quoting *Nakornthai Strip Mill Public Co. v. United States*, 32 CIT 1272, 1274, 587 F. Supp. 2d 1303, 1306 (2008)).

DISCUSSION

On remand, Commerce continues to rely on Tata Tea’s financial statements because Commerce did not find explicit evidence of a subsidy program previously determined to be countervailable in the financial statements, or in the loan documentation Xinboda submitted. *See Remand Results* at 6–18. Xinboda challenges Commerce’s stated practice, as well as the sufficiency of the evidence supporting

³ Xinboda also argues that Commerce is incorrect to rely on the revised statutory scheme, as amended by 19 U.S.C. § 1677b(c)(5). *See* Xinboda’s Br. at 4–7.

⁴ Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2012 edition.

⁵ Further citations to Title 28 of the U.S. Code are to the 2012 edition.

Commerce's conclusion. See *Xinboda's Br.* at 4–20. For the following reasons, the court sustains Commerce's determination.

In an NME, Commerce determines normal value based upon the best available information from a market economy country for the value of FOPs used in producing merchandise, plus an amount for general expenses and profit. See 19 U.S.C. §§ 1677b(c)(1), (c)(3). Relevant legislative history indicates that Commerce should “avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices” when valuing FOPs. See Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompany H.R. 3, H.R. Rep. No. 100–576 at 590–91 (1988) (Conf. Rep.), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; see also *Nation Ford Chemical v. United States*, 166 F.3d 1373, 1378 (Fed. Cir. 1999). Nonetheless, Commerce is not expected “to conduct a formal investigation to ensure that such prices are not dumped or subsidized,” but is instead to “base its decision [as to whether there is ‘reason to believe or suspect’] on information generally available to it at that time.” H.R. Rep. No. 100–576 at 590–91, 1988 U.S.C.C.A.N. at 1623–24.

In *Shenzhen Xinboda I*, the court instructed Commerce to state whether its practice is to rely on the financial statement of a company that is or may be the beneficiary of subsidies, so long as those subsidies were not previously found countervailable by Commerce, and explain why such practice is reasonable here, where there is evidence suggesting Tata Tea's statements contain subsidized prices. See *id.* at 1291. In its remand determination Commerce states that its practice is, and has been, to rely on the financial statement of a company that is or may be the beneficiary of subsidies, so long as those subsidies have not previously been found to be countervailable. See *Remand Results* at 5–8 (citing e.g., *Clearon Corp. v. United States*, 35 CIT 1685, 1688, 800 F. Supp. 2d 1355, 1359 (2011)); *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 74 Fed. Reg. 29,473 (Dep't Commerce June 22, 2009) (final results of the third new shipper reviews), and accompanying Issues & Decisions Memo For the Final Results of the 3rd New Shipper Reviews: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam at 4–5, A-552–801, (June 15, 2009); *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China*, 73 Fed. Reg. 40,485 (July 15, 2008) (final affirmative determination of sales at less-than-fair-value and partial affirmative determination of critical circumstances), and accompanying Issues & Decision Memo at 37–40, A-570–912, (July 7, 2008).

Since the *Final Results* at issue here, Congress has codified Commerce's practice in 19 U.S.C. § 1677b(c)(5).⁶ Commerce explains in its *Remand Results* that, pursuant to its practice, Commerce looks to its past countervailing duty ("CVD") findings as evidence that a company received a countervailable subsidy. *See Remand Results* at 5–6. If the financial statements or other documents refer to "a specific subsidy program found to be countervailable in a formal CVD determination," only then will Commerce exclude the company's financial statements from consideration. *See Remand Results* at 8.

Commerce explains that its view that it will only disregard financial statements where there is explicit evidence of a subsidy previously determined to be countervailable comes from the use of the phrase "reason to believe or suspect" in the legislative history.⁷ Commerce defends the reasonableness of its practice, explaining that this phrase is the same "standard for making a preliminary affirmative determination of countervailable subsidies in a CVD investigation." *Remand Results* at 7 (citing 19 U.S.C. § 1671b(b)(1) which states that "the administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a countervailable subsidy is being provided with respect to the subject merchandise."). The combination of the particular standard used for

⁶ In its remand redetermination, in addition to invoking its practice, Commerce invokes Section 505 of the Trade Preferences Extension Act of 2015 ("TPEA"), which added 19 U.S.C. § 1677b(c)(5), claiming it applies to its *Remand Results*. Commerce invokes the amendment because the remand redetermination was a determination made after the effective date of the TPEA, because § 1677b(c)(5) codified the agency's prior practice, and, because the court in its opinion cited to § 1677b(c)(5) as being applicable. *See Remand Results* at 5–11; *Shenzhen Xinboda I*, 44 CIT at ___, 456 F. Supp. 3d at 1289. *Shenzhen Xinboda I* did not need to reach the question of whether the amendment applies to remand determinations decided after the amendment in a case where the final results were issued prior to the amendment, as the amendment codifies the agency practice. *See Jacobi Carbons AB v. United States*, 42 CIT ___, ___, 313 F. Supp. 3d 1308, 1331 & n.32 (2018); *Weishan Hongda Aquati Food Co. v. United States*, 41 CIT ___, ___, 273 F. Supp. 3d 1279, 1286 & n.7 (2017). Therefore, the court, sua sponte, reconsiders its decision to cite § 1677b(c)(5), *see Shenzhen Xinboda I*, 44 CIT at ___, 456 F. Supp. 3d at 1289, and determines that doing so was unnecessary because Commerce's practice prior to the amendment was the same as the standard set forth in § 1677b(c)(5). Accordingly, the court did not need to reach the issue of whether the statute would apply to a remand determination of final results issued prior to the amendment. *See USCIT R. 60* ("The court may correct. . . a mistake arising from oversight. . . whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice."). Moreover, because the applicable standards before and after the amendment are the same, the court's error in citing the statute was a harmless error and does not affect the court's prior remand order. *See USCIT R. 60* ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

⁷ Commerce explains that financial statements, which are guided by Generally Accepted Accounting Principles are the best evidence of a company's receipt (or nonreceipt) of previously determined countervailable subsidies. *See Remand Results* at 6–7. Accordingly, Commerce examines financial statements for evidence of a subsidy program that Commerce has previously countervailed. *See id.* at 7.

an affirmative CVD determination combined with the admonition that Commerce was not to conduct a formal investigation leads Commerce to its conclusion that it was to only disregard statements that had previously been determined as countervailable.⁸ *See id.* Commerce’s parsing of these two provisions in the legislative history is logical and the court cannot say that Commerce acted unreasonably in light of the statutory provision under which Commerce acted to reach its *Final Results*.

Commerce further explains that its practice of only rejecting financial statements that evidence a previously determined countervailed subsidy is reasonable because, if Commerce had to reject every financial statement which mentioned a subsidy—as opposed to only rejecting those with explicit evidence of a previously determined countervailable subsidy—some circumstances might require Commerce to resort to less appropriate financial statements, leading to inaccuracies. *See Remand Results* at 8–9.⁹ Moreover, Commerce

⁸ Plaintiff argues that the post-TPEA statutory scheme grants greater discretion to Commerce than Congress permitted Commerce to exercise before the amendment, and therefore claims that under the statute in effect at the time of the *Final Results*, Commerce lacks discretion to require explicit evidence of subsidies prior to disregarding financial statements. Plaintiffs argue:

Congress initially mandated that Commerce “shall” disregard financial statements tainted by subsidization, but subsequently broadened Commerce’s discretion to “may disregard” such financial statements. [Compare] H.R. Rep. No. 100–576, at 590–91 (1988) (Conf. Rep.) (“In valuing [the factors of production], Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices”, [with] 19 U.S.C. § 1677b(c)(5) (“In valuing the factors of production..., the administering authority may disregard price or cost values without further investigation if the administering authority has determined that broadly available export subsidies existed or particular instances of subsidization occurred.”). Since the contested administrative review final results were issued prior to the passing of TPEA in 2015, Commerce must, as indicated in the word “shall” in the legislative history, disregard Tata Tea’s financial statement because it has “reason to believe or suspect” that Tata Tea’s price was a subsidized price. [See *Remand Results*] at 13 (admitting that “Tata Tea may have received subsidies under a previously countervailed program.”).

Xinboda’s Br. at 6. Plaintiff’s argument is mistaken. First, Plaintiff compares the language of the TPEA amendment to the language of the legislative history to different subsections of § 1677b. Commerce’s discretion to identify the best information available to value factors of production derives from § 1677b(c)(1), (c)(3) (providing for the calculation of normal value in NMEs generally using FOPs). Whether Commerce’s interpretation is reasonable is informed by the legislative history. Moreover, in adopting its interpretation Commerce explains its interpretation flows from the language in the legislative history which invokes a “reason to believe or suspect standard” which Commerce claims requires that there have been an already determined countervailable subsidy. *Remand Results* at 7. Commerce then invokes the “may” language in TPEA as a confirmation of the discretion previously exercised by Commerce. *Remand Results* at 10.

⁹ Commerce states that:

[[I]f the “reason to believe or suspect” standard, and by extension section 773(c)(5) of the Act, requires Commerce to reject every financial statement that merely mentions the word ‘subsidy,’ or even words that could be interpreted as naming a recognized subsidy program, Commerce would, in many circumstances, have no record financial statements from which to calculate surrogate financial ratios. This would likely require Commerce to resort to less desirable financial statements which may lead to inaccuracies in

explains that if, in the course of an ADD review, it had to conduct a full investigation of whether a company received a countervailable subsidy, it would not be able to meet its deadlines. *See Remand Results* at 7.

As requested by the court, Commerce further explains its practice as reasonable in this case. Here, Commerce re-examined Tata Tea's financial statements and determined that the financial statements contain no evidence of a previously countervailed subsidy program. *See Remand Results* at 10–11. Commerce further explains that Xinboda's proffered loan documentation does not demonstrate that Tata Tea received a previously determined countervailable subsidy. *See id.* at 14–16; *Shenzhen Xinboda I*, 44 CIT at __, 456 F. Supp. 3d at 1290–91. Rather, in order to verify whether the loan agreements relate to a countervailable subsidy, "Commerce would need to conduct a full investigation of these loans." *See Remand Results* at 14.

Commerce also confronts evidence that it has previously found certain export credits and packing credits—the type of financial assistance that is the subject of the loan or hypothecation agreements—to be countervailable. *See Remand Results* at 15 (citing *Polyethylene Terephthalate Film, Sheet, and Strip ("PET Film") from India*, 73 Fed. Reg. 75,672 (December 12, 2008) (final results of [CVD] admin. rev.), and accompanying Issues & Decision Memo in the Final Results of the [CVD] Admin. Rev. of [PET] Film from India at 4–11, C-533–825, (Dec. 5, 2008) ("PET Film from India"); *Certain Hot-Rolled Carbon Steel Flat Products from India*, 74 Fed. Reg. 20,923 (May 6, 2009) (final results and partial rescission of [CVD] admin. rev.), and accompanying Issues & Decision Memo: Final Results and Partial Rescission of [CVD] Admin. Rev. at Cmt. 4, C-533–821, (Apr. 29, 2009) ("Hot-Rolled Carbon Steel from India")). Nonetheless, Commerce explains that export and packing credits are not always countervailable as they are considered a type of short-term credit. *See Remand Results* at 15–16.¹⁰ In this case, Commerce distinguishes the hypothecation agreements invoked by Xinboda from the Government of India's Pre- and Post-Shipment Program, previously found to be countervailable by Commerce. *See Remand Results* at 16–18. The loan or hypothecation agreements provide collateral for the packing

calculating financial ratios. In this review, if the "reason to believe or suspect standard" from the 1988 legislative history were interpreted to require such a practice, there would be no financial statements on the record from which to determine surrogate ratios.

Remand Results at 8–9.

¹⁰ Moreover, Commerce explains, not only are export credits not always countervailable, but also, here, it is unclear whether Tata Tea was merely eligible for the export credits, or whether it actually received them. *See Remand Results* at 8, 14–16.

and export credits and there is no evidence that they relate to a program Commerce has previously found to be countervailable.¹¹

Xinboda argues that although the record may lack evidence that the programs involved were previously countervailed, there is sufficient evidence to meet the “reason to believe or suspect standard.” Xinboda Br. at 11. Yet, Xinboda does not point to any evidence that Commerce’s application of its practice in this instance is unreasonable. Commerce addresses the record evidence that the programs are countervailable finding that evidence inconclusive. Specifically, Commerce addresses the court’s concern that at least one of the loans was provided at below market rate, *see Shenzhen Xinboda I*, 44 CIT at ___, 456 F. Supp. 3d at 1290, explaining that on the record provided the provision of loans at below market rate cannot actually be verified. *See Remand Results* at 17. Although, Xinboda can point to evidence that might support an alternative conclusion, the court must sustain Commerce’s determination if the record reasonably supports it. *See King Supply Co., LLC v. United States*, 674 F.3d 1343, 1348 (Fed. Cir. 2012) (“*King Supply Co.*”) (noting that “even if it is possible to draw two inconsistent conclusions from evidence in the record, such a possibility does not prevent Commerce’s determination from being supported by substantial evidence.” (citations omitted)).

Conversely, Xinboda continues to argue that Garlico is the “most suitable” Indian company to rely on as a surrogate for Xinboda. *See Xinboda’s Br.* at 20–25. Even if Xinboda can identify financial statements that would be reasonable alternatives for Commerce to select, it is not this court’s role to identify the most suitable choice. *See King Supply Co.*, 674 F.3d at 1348 (Fed. Cir. 2012). This court is tasked with determining whether Commerce’s choice was reasonable. Xinboda has not identified any evidence that undermines the reasonableness of Commerce’s choice. In sum, Commerce’s continued reliance on

¹¹ Xinboda argues that the hypothecation agreements specifically reference “pre-shipment and post-shipment credits[.]” Xinboda’s Br. at 15, and asserts that “it is simply untenable for Commerce to argue that these loan agreements . . . do not relate to the Pre- and Post-Shipment program previously found to be countervailable.” *See id.* at 17. Despite Xinboda’s protestations, Commerce’s position is not unreasonable. There may be various types of pre- and post-shipment credits that are distinct from the specific Pre- and Post-Shipment Program Commerce has previously determined to be countervailable. The hypothecation agreements quoted by Xinboda do not specifically refer to the Government of India’s Pre- and Post-Shipment Program; rather they state

[I]n consideration of the Bank having granted . . . by way of overdrafts, cash credits, term loans, pre-shipment and post-shipment credits, opening of letters of credits, issuing of guarantees including deferred payment guarantees and indemnities, negotiations and discounting of demand and or usance bills and cheques inland as well as foreign and such other facilities as may be agreed[.]

Xinboda’s Br. at 15 (citing Xinboda Surrogate Value Submission – Final at Ex. 33, PD 149–151, 155, (Jan. 6, 2012)). Commerce is within its discretion to find such language insufficient to establish that a previously determined countervailable subsidy was at issue in Tata Tea’s financial statements.

Tata Tea's financial statement based on its practice to only exclude relevant financial statements from consideration where such statements have evidence of previously determined countervailable subsidies is reasonable.

Xinboda also argues that if Commerce may use Tata Tea's financial statements, then it should also use other statements it chose to disregard. *See* Xinboda's Br. at 17. Yet, Commerce specifically found that some of these statements did contain previously countervailed subsidies. *See* Final Decision Memo at 43–45 & n.198. Xinboda challenges the reasonableness of those determinations given the evidence at issue. *See* Xinboda's Br. at 18–19. In doing so, Xinboda is asking this court to reweigh the evidence which this court cannot do. *See Downhole Pipe & Equipment, L.P. v. United States*, 776 F.3d 1369, 1376–77 (Fed. Cir. 2015).

CONCLUSION

For the foregoing reasons, Commerce's *Remand Results* are supported by substantial evidence and comply with the court's order in *Shenzhen Xinboda I*, and are therefore sustained. Judgment will enter accordingly.

Dated: February 8, 2021

New York, New York

/s/ Claire R. Kelly

CLAIRE R. KELLY, JUDGE

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