

U.S. Customs and Border Protection



APPLICATION TO USE AUTOMATED COMMERCIAL ENVIRONMENT (ACE)

AGENCY: U.S. Customs and Border Protection, 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 July 28, 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 86 FR 14937) on March 19, 2021, 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: Application to Use Automated Commercial Environment (ACE).

OMB Number: 1651-0105.

Current Actions: Extension.

Type of Review: Extension (without change).

Affected Public: Businesses.

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

To establish an ACE Portal account, participants submit information such as their name, their employer identification number (EIN)

or social security number (SSN), and if applicable, a statement certifying their capability to connect to the internet. This information is submitted through the ACE Secure Data Portal which is accessible at: <http://www.cbp.gov/trade/automated>.

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

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

Type of Information Collection: Application to ACE (Import)

Estimated Number of Respondents: 21,100.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 21,100.

Estimated Time per Response: 0.33 hours.

Estimated Total Annual Burden Hours: 6,963.

Type of Information Collection: Application to ACE (Export)

Estimated Number of Respondents: 9,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 9,000.

Estimated Time per Response: 0.066 hours.

Estimated Total Annual Burden Hours: 594.

Type of Information Collection: Application to ACE (Protest)

Estimated Number of Respondents: 3,750.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 3,750.

Estimated Time per Response: 0.066 hours.

Estimated Total Annual Burden Hours: 248.

Dated: June 23, 2021.

SETH D. RENKEMA,

Branch Chief,

*Economic Impact Analysis Branch,
U.S. Customs and Border Protection.*

**QUARTERLY IRS INTEREST RATES USED IN
CALCULATING INTEREST ON OVERDUE ACCOUNTS AND
REFUNDS ON CUSTOMS DUTIES**

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

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will remain the same from the previous quarter. For the calendar quarter beginning July 1, 2021, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of July 1, 2021.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 298-1107.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2021-10, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2021, and ending on September 30, 2021. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (0%) plus three percentage points (3%) for a total of three percent (3%) for both

corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (0%) plus two percentage points (2%) for a total of two percent (2%). For overpayments made by non-corporations, the rate is the Federal short-term rate (0%) plus three percentage points (3%) for a total of three percent (3%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties remain the same from the previous quarter. These interest rates are subject to change for the calendar quarter beginning October 1, 2021, and ending on December 31, 2021.

For the convenience of the importing public and U.S. Customs and Border Protection personnel, the following list of IRS interest rates used, covering the period from July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

| Beginning date | Ending date | Underpayments (percent) | Overpayments (percent) | Corporate overpayments (Eff. 1-1-99) (percent) |
|----------------|-------------|----------------------------|---------------------------|---------------------------------------------------------|
| 070174 | 063075 | 6 | 6 | ..... |
| 070175 | 013176 | 9 | 9 | ..... |
| 020176 | 013178 | 7 | 7 | ..... |
| 020178 | 013180 | 6 | 6 | ..... |
| 020180 | 013182 | 12 | 12 | ..... |
| 020182 | 123182 | 20 | 20 | ..... |
| 010183 | 063083 | 16 | 16 | ..... |
| 070183 | 123184 | 11 | 11 | ..... |
| 010185 | 063085 | 13 | 13 | ..... |
| 070185 | 123185 | 11 | 11 | ..... |
| 010186 | 063086 | 10 | 10 | ..... |
| 070186 | 123186 | 9 | 9 | ..... |
| 010187 | 093087 | 9 | 8 | ..... |
| 100187 | 123187 | 10 | 9 | ..... |
| 010188 | 033188 | 11 | 10 | ..... |
| 040188 | 093088 | 10 | 9 | ..... |
| 100188 | 033189 | 11 | 10 | ..... |
| 040189 | 093089 | 12 | 11 | ..... |
| 100189 | 033191 | 11 | 10 | ..... |
| 040191 | 123191 | 10 | 9 | ..... |
| 010192 | 033192 | 9 | 8 | ..... |
| 040192 | 093092 | 8 | 7 | ..... |
| 100192 | 063094 | 7 | 6 | ..... |
| 070194 | 093094 | 8 | 7 | ..... |
| 100194 | 033195 | 9 | 8 | ..... |

| Beginning date | Ending date | Underpayments (percent) | Overpayments (percent) | Corporate overpayments (Eff. 1-1-99) (percent) |
|----------------|-------------|----------------------------|---------------------------|---------------------------------------------------------|
| 040195 | 063095 | 10 | 9 | ..... |
| 070195 | 033196 | 9 | 8 | ..... |
| 040196 | 063096 | 8 | 7 | ..... |
| 070196 | 033198 | 9 | 8 | ..... |
| 040198 | 123198 | 8 | 7 | ..... |
| 010199 | 033199 | 7 | 7 | 6 |
| 040199 | 033100 | 8 | 8 | 7 |
| 040100 | 033101 | 9 | 9 | 8 |
| 040101 | 063001 | 8 | 8 | 7 |
| 070101 | 123101 | 7 | 7 | 6 |
| 010102 | 123102 | 6 | 6 | 5 |
| 010103 | 093003 | 5 | 5 | 4 |
| 100103 | 033104 | 4 | 4 | 3 |
| 040104 | 063004 | 5 | 5 | 4 |
| 070104 | 093004 | 4 | 4 | 3 |
| 100104 | 033105 | 5 | 5 | 4 |
| 040105 | 093005 | 6 | 6 | 5 |
| 100105 | 063006 | 7 | 7 | 6 |
| 070106 | 123107 | 8 | 8 | 7 |
| 010108 | 033108 | 7 | 7 | 6 |
| 040108 | 063008 | 6 | 6 | 5 |
| 070108 | 093008 | 5 | 5 | 4 |
| 100108 | 123108 | 6 | 6 | 5 |
| 010109 | 033109 | 5 | 5 | 4 |
| 040109 | 123110 | 4 | 4 | 3 |
| 010111 | 033111 | 3 | 3 | 2 |
| 040111 | 093011 | 4 | 4 | 3 |
| 100111 | 033116 | 3 | 3 | 2 |
| 040116 | 033118 | 4 | 4 | 3 |
| 040118 | 123118 | 5 | 5 | 4 |
| 010119 | 063019 | 6 | 6 | 5 |
| 070119 | 063020 | 5 | 5 | 4 |
| 070120 | 093021 | 3 | 3 | 2 |

Dated: June 24, 2021.

JEFFREY CAINE,
Chief Financial Officer,
U.S. Customs and Border Protection.

[Published in the Federal Register, June 30, 2021 (85 FR 34774)]

19 CFR PART 177

MODIFICATION OF TWO RULING LETTERS, REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF TEXTILE COVER FOR UNSPRUNG MATTRESS FOUNDATION

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

ACTION: Notice of modification of two ruling letters, revocation of two ruling letters, and revocation of treatment relating to the tariff classification of a textile cover for unsprung mattress foundation.

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 modifying two ruling letters and revoking two ruling letters concerning tariff classification of a textile cover for unsprung mattress foundation under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 55, No. 16, on April 28, 2021. No comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 12, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. 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), a notice was published in the *Customs Bulletin*, Vol. 55, No. 16, on April 28, 2021, proposing to modify two ruling letters and revoke two ruling letters pertaining to the tariff classification of a textile cover for unsprung mattress foundation. 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 NY N187630, HQ H254127, NY L81761, and NY L81762, CBP classified textile covers for unsprung mattress foundations in heading 9403, HTSUS, specifically in subheading 9403.90.60, HTSUS, which provides for "other furniture and parts thereof: parts: other: of textile material except cotton". CBP has reviewed the aforementioned rulings and has determined the ruling letters to be in error. It is now CBP's position that textile covers for unsprung mattress foundations are properly classified in heading 6307, HTSUS, specifically in subheading 6307.90.9891, HTSUS, which provides for "other made up articles, including dress patterns: other: other: other: other: other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY L81761, and NY L81762, revoking NY N187630 and HQ H254127, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (HQ) H281803, 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: June 23, 2021

ALLYSON MATTANAH
for
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H281803

June 23, 2021

OT:RR:CTF:CPMMA H281803 AJK

CATEGORY: Classification

TARIFF NO: 6307.90.9891

MR. BRETT IAN HARRIS
PISANI & ROLL LLP
ATTORNEYS AT LAW
1629 K STREET NW, SUITE 300
WASHINGTON, DC 20006

RE: Revocation of NY N187630 and HQ H254127; Modification of NY L81761 and L81762; Classification of Textile Cover for Unsprung Mattress Foundation

DEAR MR. HARRIS:

This letter is in reference to your New York Ruling Letter (NY) N187630, dated October 24, 2011, and Headquarter Ruling Letter (HQ) H254127, dated May 15, 2015, concerning the tariff classification of textile covers for unsprung mattress foundations. In the aforementioned rulings, U.S. Customs and Border Protection (CBP) classified the merchandise in heading 9403, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N187630 and HQ H254127, and have determined that the classification of the merchandise in heading 9403, HTSUS, was incorrect.

We have also reviewed NY L81761, dated January 21, 2005, and NY L81762, dated January 24, 2005, and have determined that they were incorrect. For the reasons set forth below, we revoke two ruling letters and modify two ruling letters.

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, notice proposing to revoke NY N187630 and HQ H254127 and to modify NY L81761 and L81762 was published on April 28, 2021, in Volume 55, Number 16, of the *Customs Bulletin*. No comments were received in response to this Notice.

FACTS:

The subject merchandise was described in NY N187630 as follows:

The foundation covers are designed to be placed and stapled to a Medium Density Fiberboard (MDF) mattress foundation, which is used in conjunction with a Tempur-Pedic mattress. The foundation covers typically consist of three different fabrics: a rectangular 100 percent polyester stitch-bonded platform piece sewn to single warp, 100 percent polyester knit side panels, and a separate rectangular 100 percent polyester non-woven dust cover stapled to the bottom of the foundation. These foundation covers are not designed to cover a mattress, only the foundation that the mattress will rest on.

The subject merchandise was described in HQ H254127 as follows:

The mattress foundation incorporates characteristics of a bed frame, in that it sits directly on the floor, and it replaces a standard box spring for this specialized adjustable bed. The foundation is composed of a wooden frame (medium-density fiberboard or MDF) with various adjustable steel parts which allow the head portions and/or the foot portions of the bed to

raise and lower electronically... The mattress foundation does not contain any springs or wire mesh or stuffing of any kind.

...

The subject merchandise are three different styles of textile mattress foundation covers, which are placed on the mattress foundation and secured via staples post-importation. The styles are the Tempur-Up, Tempur-Ergo Grand, and the Tempur-Ergo Premier. Each features a rectangular stich bonded or woven fabric platform piece sewn to decorative knit or woven side panels. The Tempur-Up style also features a separate rectangular non-woven fabric dust cover stapled to the bottom of the mattress foundation. The products are not used as bed covers or used to cover the mattress layer, rather, they are only attached to the mattress foundation.

The subject merchandise was described in NY L81761 as follows:

The fiber content ... is stated to be 59 percent polyester and 41 percent polypropylene fabric with polyester fiber and nylon netting. The foundation cover is comprised of a rectangular non-woven platform sewn to quilted side panels. The bottom portion of the cover is open. After importation the cover will be placed over and stapled to a wooden frame with slats. This foundation is used to support a mattress but ... it is not filled with springs or steel wire mesh.

The subject merchandise in NY L81762 is substantially similar to the product described in NY L81761.

ISSUE:

Whether the textile cover for unsprung mattress foundation is classified in heading 6307, HTSUS, as other made up textile articles, heading 9403, HTSUS, as other furniture and parts, or heading 9404, HTSUS, as mattress supports.

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:

- 6307: Other made up articles, including dress patterns.
- 9403: Other furniture and parts thereof.
- 9404: Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered.

Note 7 to Section XI, which provides for textiles and textile articles, provides:

7. For the purposes of this section, the expression “made up” means:

...

(f) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded);

Note 2 to Chapter 94, HTSUS, provides, in pertinent part:

2. The articles (other than parts) referred to in headings 94.01 to 94.03 are to be classified in those headings only if they are designed for placing on the floor or ground.

* * * * *

The Harmonized Commodity Description and Coding System (HS) Explanatory Notes (ENs) constitute the official interpretation of the HS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HS at the international level, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The General EN to Chapter 94, HTSUS, provides, in pertinent part:

For the purposes of this Chapter, the term “furniture” means:

(A) Any “movable” articles (not included under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport....

The Parts EN to Chapter 94, HTSUS, provides in pertinent part:

This Chapter only covers parts, whether or not in the rough, of the goods of headings 94.01 to 94.03 and 94.05, when identifiable by their shape or other specific features as parts designed solely or principally for an article of those headings. They are classified in this Chapter when not more specifically covered elsewhere.

EN 63.07 provides as follows:

This heading covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature.

EN 94.03, provides, in pertinent part:

The heading does not include:

...

(n) Mattress supports (heading 94.04)

EN 94.04 provides, in pertinent part, as follows:

(A) Mattress supports, i.e., the sprung part of a bed, normally consisting of a wooden or metal frame fitted with springs or steel wire mesh (spring or wire supports), or of a wooden frame with internal springs and stuffing covered with fabric (mattress bases).

* * * * *

As a preliminary matter, we clarify the difference between each textile cover for unsprung mattress foundations in the aforementioned rulings. Although all of the subject merchandise are designed to cover mattress

foundations without springs or wires, each has minor distinguishable characters. First, the textile covers in NY L81761 and NY L81762 are designed to be stapled to unsprung mattress foundations while leaving the bottom portions open. Similarly, the merchandise in NY N187630 and HQ H254127 are designed to be stapled to the mattress foundations; however, they contain additional dust covers that are stapled to the bottom of the foundations. Second, unlike the unsprung mattress foundation in HQ H254127 that is designed and intended to be placed directly on the floor, the descriptions of unsprung mattress foundations in NY N187630, NY L81761 and NY L81762 suggest that they are designed to be used in conjunction with bed frames. As explained below, however, the differences in the placement of the covers and unsprung mattress foundations do not affect our analysis.

Note 2 of Chapter 94 states that heading 9403, HTSUS, includes articles and parts that are designed to be placed directly on the floor or ground only. The General EN to Chapter 94 further explains that “furniture” means any movable articles that are designed to be placed on the floor or ground and used to equip private dwellings. Accordingly, the mattress foundation in HQ H254127, which is intended to be placed directly on the floor, constitutes furniture for classification purposes under HTSUS. The mattress foundations in NY N187630, NY L81761 and NY L81762, however, do not qualify as “furniture” because they are designed to be placed on bed frames, not on the floor.

The Parts EN to Chapter 94 provides that “[chapter 94] only covers parts ... of the goods of heading[] ... 94.03 ..., when identifiable by their shape or other specific features as parts designed solely or principally for an article of those headings.” The term “part”, however, is not defined in HTSUS or ENs. In the absence of a statutory definition, courts have applied two tests to determine whether a merchandise constitutes a part of an article. *See Bauerhin Techs. Ltd. Pshp. v. United States*, 110 F.3d 774, 779 (Fed. Cir. 1997). First, as set forth in *United States v. Willoughby Camera Stores, Inc.*, a “part” of an article is “an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” 21 C.C.P.A. 322, 324 (1933). Second, as held in *United States v. Pompeo*, an item is a “part” if (1) “at the time of importation [it is] dedicated solely for use” with a particular article, and (2) “when applied to that use ... meet[s] the definition of “parts” established by the Willoughby case.” 43 C.C.P.A. 9, 14 (1955). Moreover, an item is not a part if it is “a separate and distinct commercial entity.” *Bauerhin*, 110 F.3d at 779.

Although the mattress foundation in HQ H254127 is classifiable as furniture under heading 9403, HTSUS, the textile cover does not constitute a part of furniture for classification purposes because it fails to satisfy the two tests of *Willoughby* and *Pompeo*. Under *Willoughby*, the textile cover is not a part because the cover is not necessary for the mattress foundation to perform its function of supporting a mattress. In HQ H254127, CBP held that the textile covers are part of mattress foundations because the covers are specially cut to fit over mattress foundations, are permanently attached to mattress foundations, and provide a permanent decorative look by covering parts of the mattress foundations which would otherwise be exposed. Although the covers undeniably provide the aesthetics to the mattress foundations, we now hold that such aesthetical enhancement cannot be upheld as an integral part of the mattress foundations. Without the cover, the foundation is already capable of performing its function due to the wooden parts that establish the

shape, strength, and utility of the foundation. The mere covering of the exposed wooden parts does not affect the functionality of the foundation itself. Thus, under *Willoughby*, the cover does not constitute as “an integral, constituent, or component part” that the foundation cannot function without. Moreover, even if the cover is a distinguishable item that can be used solely with a particular mattress foundation, it still fails under *Pompeo*, because it does not meet the *Willoughby* test. Therefore, the textile cover cannot be classified as a part of the unsprung mattress foundations under heading 9403, HTSUS.

The unsprung mattress foundations in NY N187630, NY L81761 and NY L81762, which are not intended to be placed directly on the floor, are excluded from heading 9403, HTSUS; instead, they are, *prima facie*, classified in heading 9404, HTSUS, which is an *eo nomine* provision for mattress supports. EN 94.04 provides that heading 9404, HTSUS, includes wooden or metal frame fitted with springs, wires, or stuffing covered with fabric. In HQ H273340, dated July 26, 2016, however, CBP held that heading 9404, HTSUS, is not restricted to sprung mattress foundations because the fact that EN 94.04 states that mattress supports “normally” consists of springs or wire mesh does not preclude unsprung mattress foundations from heading 9404, HTSUS. Accordingly, the unsprung mattress foundations without springs and wires, which are used to support mattresses and placed on bed frames, are classified in heading 9404, HTSUS, as mattress supports. The wholly textile articles that are stapled to the mattress foundations, however, are not classifiable in heading 9404, HTSUS, because they are clearly not mattress support themselves. Furthermore, as there is no provision for parts within heading 9404, HTSUS, the textile covers cannot be classified as parts of mattress supports.

EN 63.07 provides that heading 6307, HTSUS, includes “made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature.” The term “made up” is defined in Note 7 to Section XI as textiles that are “[a]ssembled by sewing, gumming or otherwise”. See Note 7(f) to Section XI. Accordingly, the instant textile covers are classified in heading 6307, HTSUS, because the covers are made up articles that are sewn and do not fall under any other heading in HTSUS. In NY K81507, dated December 10, 2003, NY N024859, dated March 27, 2008, and HQ H273340, dated July 26, 2016, we found that similar textile covers for mattress foundations were classified in heading 6307, HTSUS. Therefore, the instant textile covers for unsprung mattress foundations, regardless of whether the foundations are designed to be placed directly on the floor, are classified in heading 6307, HTSUS, as made up textile articles.

Pursuant to GRI 1, the textile covers for unsprung mattress foundations are classified in heading 6307, HTSUS, as “[o]ther made up articles, including dress patterns”. This conclusion is consistent with prior CBP rulings classifying other textile covers for unsprung mattress foundations and similar articles under heading 6307, HTSUS.

HOLDING:

By application of GRI 1, the textile covers for unsprung mattress foundations are classified in heading 6307, HTSUS, specifically subheading 6307.90.9891, HTSUS, which provides for “[o]ther made up articles, including dress patterns: [o]ther: [o]ther: [o]ther: [o]ther”. The 2021 column

one, general rate of duty is seven percent *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 N187630, dated October 24, 2011, and HQ H254127, dated May 15, 2015, are hereby revoked. In addition, NY L81761, dated January 21, 2005, and NY L81762, dated January 24, 2005, are modified.

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

Sincerely,

ALLYSON MATTANAH

for

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

CC: Mr. Greg Wind
Boyd Flotation, Inc./ Boyd Specialty Sleep
2440 Adie Road
Maryland Heights, MO 63043



19 CFR PART 177

**MODIFICATION OF TWO RULING LETTERS, REVOCATION
OF ONE RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CORAL BEADS FOR JEWELRY AND
JEWELRY WITH ABALONE**

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

ACTION: Notice of modification of two ruling letters, revocation of one ruling letter, and revocation of treatment relating to the tariff classification of coral beads for jewelry and jewelry with abalone.

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 modifying two ruling letters and revoking one ruling letter concerning tariff classification of coral beads for jewelry and jewelry with abalone under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the

proposed action was published in the *Customs Bulletin*, Vol. 55, No. 16, on April 28, 2021. No comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 12, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. 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), a notice was published in the *Customs Bulletin*, Vol. 55, No. 16, on April 28, 2021, proposing to modify two ruling letters and revoke one ruling letter pertaining to the tariff classification of coral beads for jewelry and jewelry with abalone. 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 NY N284708 and N285626, CBP classified a pair of earrings with genuine abalone sheets in heading 7116, HTSUS, specifically in subheading 7116.20.05, HTSUS, which provides for “Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry: Valued not over \$40 per piece: Other.” Similarly, in NY N123795, CBP classified coral beads for jewelry in heading 7116, HTSUS, specifically in subheading 7116.20.40, HTSUS, which provides for “Articles of precious and semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other.”

CBP has reviewed NY N285626, NY N123795 and NY N284708, and has determined the ruling letters to be in error. It is now CBP’s position that jewelry with abalone are properly classified in heading 7117, HTSUS, specifically in subheading 7117.90.90, HTSUS, which provides for “Imitation jewelry: Other: Other: Other: Other.” In addition, the coral beads for jewelry are properly classified in heading 9601, HTSUS, specifically in subheading 9601.90.40, HTSUS, which provides for “Worked ivory, bone, tortoise-shell, horn, antlers, coral, mother-of-pearl and other animal carving material, and articles of these materials (including articles obtained by molding): Other: Coral, cut but not set, and cameos, suitable for use in jewelry”.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N123795 and NY N284708, revoking NY N285626, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (HQ) H293170, 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: June 28, 2021

ALLYSON MATTANAH
for

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H293170

June 28, 2021

OT:RR:CTF:CPMMA H293170 AJK

CATEGORY: Classification

TARIFF NO: 7117.90.90; 9601.90.40

Ms. DIONISIA MELMAN
CUSTOMS COMPLIANCE AND LOGISTICS MANAGER
THE JEWELRY GROUP
1411 BROADWAY, 3RD FLOOR
NEW YORK, NY 10018

RE: Revocation of NY N285626; Modification of NY N123795 and NY N284708; Classification of Coral Beads for Jewelry and Jewelry with Abalone

DEAR Ms. MELMAN:

This letter is reference to your New York Ruling Letters (NY) N284708, dated April 7, 2017, and NY N285626, dated May 1, 2017, concerning the tariff classification of jewelry with abalone. In NY N284708 and NY N285626, U.S. Customs and Broder Protection (CBP) classified the merchandise in heading 7116, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed the aforementioned rulings, and have determined that the classification of the subject merchandise in heading 7116, HTSUS, was incorrect.

We have also reviewed NY N123795, dated October 13, 2010, concerning the tariff classification of coral beads for jewelry, and have determined that the ruling was incorrect. For the reasons set forth below, we revoke one ruling letter and modify two ruling letters.

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, notice proposing to revoke NY N285626 and to modify NY N123795 and NY N284708 was published on April 28, 2021, in Volume 55, Number 16, of the Customs Bulletin. No comments were received in response to this Notice.

FACTS:

The jewelry with abalone was described in NY N284708 as follows:

Style number 60468619–276 is a pair of earrings identified as the Lonna & Lilly “PE Square Stud.” Each earring consists of 1–8 by 12mm genuine [Abalone] sheet covered by an 8 by 12mm faceted, epoxy imitation gemstone, and 1 zinc casting plated in worn silver. Company provided information in the aggregate indicates that the weight and cost of the zinc castings exceed the cost of the abalone sheets and faceted, epoxy imitation gemstones.

The subject merchandise in NY N285626 was substantially similar to the product described above.

The coral beads for jewelry were described in NY N123795 as follows:

Sample 2, identified simply as style B, are several small coral beads, each having holes for stinging [*sic*], and that have been polished and dyed a red coral color. The coral beads have not been identified as either being of natural or simulant material. Although not specified, the coral beads have

inserts for being strung, thereby making them appropriate for creating items of jewelry like necklaces & bracelets.

ISSUE:

Whether the coral beads for jewelry and jewelry with abalone are classified in heading 7116, HTSUS, as articles of precious or semi-precious stones, heading 7117, HTSUS, as imitation jewelry, or heading 9601, HTSUS, as worked coral.

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:

| | |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7116: | Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): |
| 7116.20: | Of precious or semiprecious stones (natural, synthetic or reconstructed): |
| 7116.20.05: | Articles of jewelry: Valued not over \$40 per piece |
| 7116.20.40: | Other: Of semiprecious stones (except rock crystal): Other |
| 7117: | Imitation jewelry: |
| 7117.90: | Other: |
| 7117.90.90: | Other: Valued over 20 cents per dozen pieces or parts: Other: Other |
| 9601: | Worked ivory, bone, tortoise-shell, horn, antlers, coral, mother-of-pearl and other animal carving material, and articles of these materials (including articles obtained by molding): |
| 9601.90: | Other: |
| 9601.90.40: | Coral, cut but not set, and cameos, suitable for use in jewelry |
| | * * * * * |

Note 11 to Chapter 71, HTSUS, provides as follows:

For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

* * * * *

Notes to Chapter 96, HTSUS, provides, in pertinent:

1. This chapter does not cover:
- ...

(c) Imitation jewelry (heading 7117);

...

- 4. Articles of this Chapter, other than those of headings 96.01 to 96.06 or 96.15, remain classified in the Chapter whether or not composed wholly or partly of precious metal or metal clad with precious metal, of natural or cultured pearls, or precious or semi-precious stones (natural, synthetic or reconstructed). However, headings 96.01 to 96.06 and 96.15 include articles in which natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed), precious metal or metal clad with precious metal constitute only minor constituents.

* * * * *

The Harmonized Commodity Description and Coding System (HS) Explanatory Notes (ENs) constitute the official interpretation of the HS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HS at the international level, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

EN 71.13 provides, in pertinent part:

To fall in this heading these articles must contain precious metal or metal clad with precious metal (including base metal inlaid with precious metal) to an extent exceeding minor constituents; (thus a cigarette case of base metal with a simple monogram of gold or silver remains classified as an article of base metal). Subject to this condition the goods may also contain pearls (natural, cultured or imitation), precious or semi-precious stones (natural, synthetic or reconstructed), imitation stones, or parts of tortoise-shell, mother of pearl, ivory, amber (natural or agglomerated), jet or coral.

* * * * *

EN 71.17 provides, in pertinent part, as follows:

For the purposes of this heading, the expression imitation jewellery, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc., but not including buttons and other articles of heading 96.06, or dress combs, hair-slides or the like, and hair-pins of heading 96.15, provided they do not incorporate precious metal or metal clad with precious metal (except as plating or as minor constituents as defined in Note 2 (A) to this Chapter, e.g., monograms, ferrules and rims) nor natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).

The heading also covers unfinished or incomplete articles of imitation jewellery (ear-rings, bracelets, necklaces, etc.)....

* * * * *

EN 96.01 provides, in pertinent part, as follows:

For the purposes of this heading, the expression “worked” refers to materials which have undergone processes extending beyond the simple preparations permitted in the heading for the raw material in question (see the Explanatory Notes to headings 05.05 to 05.08). The heading therefore covers pieces of ivory, bone, tortoise-shell, horn, antlers, coral,

mother-of-pearl, etc., in the form of sheets, plates, rods, etc., cut to shape (including square or rectangular) or polished or otherwise worked by grinding, drilling, milling, turning, etc. However, pieces which are identifiable as parts of articles are excluded from this heading if such parts are covered by another heading of the Nomenclature.

...

This heading also excludes:

...

(d) Articles of imitation jewellery (heading 71.17)....

* * * * *

As a preliminary matter, we note that the EN’s Annex to Chapter 71, HTSUS, lists various minerals that are classified as precious or semi-precious stones. The Annex does not include organic materials, such as abalone or coral. Within the context of classification under HTSUS, therefore, abalone and coral do not constitute precious or semi-precious stones. Moreover, in regard to coral beads for jewelry, the fact that coral does not qualify as precious or semi-precious stones is further supported by EN 71.13, which identifies “precious or semi-precious stones” separately from “coral”.

Note 11 to Chapter 71 provides that “imitation jewelry” means articles of jewelry that does not incorporate precious or semi-precious stones. EN 71.17 further explains that heading 7117, which provides for imitation jewelry, includes small objects of personal adornment that do not contain precious or semi-precious stones. Accordingly, any jewelry that does not incorporate precious or semi-precious stones are, *prima facie*, classified in heading 7117, HTSUS. In the instant case, the jewelry with abalone is not classifiable in other headings as abalone is not specifically identified in HTSUS with the exception of headings 0307 and 1605, HTSUS, which are located in section I of live animals, and in section IV of prepared foodstuffs, *respectively*. Thus, under GRI 1, the instant jewelry with abalone in NY N284708 and NY N285626 are, *prima facie*, classified under heading 7117, HTSUS, as imitation jewelry. *See e.g.*, NY N242292, dated June 7, 2013; NY L88978, dated December 2, 2005; NY K82175, dated January 12, 2004; NY K82176, dated January 6, 2004; and NY K82174, dated January 6, 2004.

Although coral is not a precious or semi-precious stones under HTSUS, the instant coral beads for jewelry in NY N123795 are not classifiable in heading 7117, HTSUS, as imitation jewelry. First, the coral beads do not constitute imitation jewelry because they are not in the form of jewelry at the time of importation. Second, *generally*, coral beads are considered as their own entity as identified in heading 9601, HTSUS, and thus, do not constitute parts of jewelry. Although EN 71.17 provides that heading 7117, HTSUS, includes “unfinished or incomplete articles of imitation jewellery”, the instant coral beads are not parts of imitation jewelry because they are explicitly identified in heading 9601, HTSUS, which provides for worked coral that are “cut to shape (including square or rectangular) or polished or otherwise worked by grinding, drilling, milling, turning, etc.” EN 96.01. While not dispositive of a heading level dispute, we note that subheading 9601.90.40, HTSUS, provides for “[c]oral, cut but not set, ... suitable for use in jewelry”. This supports our conclusion that the instant coral beads—which have been cut into small shapes of beads, polished, and drilled with small holes for stringing to create jewelry—are classified in subheading 9601.90.40, HTSUS, as worked coral for jewelry.

Pursuant to GRI 1, coral beads for jewelry are classified in heading 9601, HTSUS, as worked coral, and jewelry with abalone are classified in heading 7117, HTSUS, as imitation jewelry.

HOLDING:

By application of GRI 1, coral beads for jewelry are classified in heading 9601, HTSUS, specifically, subheading 9601.90.40, HTSUS, which provides for “[w]orked ivory, bone, tortoise-shell, horn, antlers, coral, mother-of-pearl and other animal carving material, and articles of these materials (including articles obtained by molding): [o]ther: [c]oral, cut but not set, and cameos, suitable for use in jewelry”. The 2021 column one, general rate of duty is 2.1 percent *ad valorem*.

In addition, jewelry with abalone are classified in heading 7117, HTSUS, specifically subheading 7117.90.90, HTSUS, which provides for “[i]mitation jewelry: [o]ther: [o]ther: [o]ther: [o]ther”. The 2021 column one, general rate of duty is 11 percent *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 N284708, dated April 7, 2017, is hereby revoked. In addition, NY N285626, dated May 1, 2017, and NY N123795, dated October 13, 2010, are modified as noted above.

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

Sincerely,

ALLYSON MATTTANAH

for

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

CC: Ms. Nicole Trimble
Import Supervisor
Agra Services Brokerage Co., Inc.
221–20 147th Avenue
Jamaica, NY 11413

U.S. Court of International Trade

Slip Op. 21–79

DONG-A STEEL COMPANY, Plaintiff, and KUKJE STEEL CO., LTD., Consolidated Plaintiff, v. UNITED STATES, Defendant, and INDEPENDENCE TUBE CORPORATION, SOUTHLAND TUBE, INCORPORATED, ATLAS TUBE, and SEARING INDUSTRIES, Defendant-Intervenors.

Before: Gary S. Katzmman, Judge
Consol. Court No. 19–00104

[The court affirms Commerce’s *Remand Results*.]

Dated: June 24, 2021

Jarrod M. Goldfeder and *Robert G. Gosselink*, Trade Pacific, LLP, of Washington, D.C. for plaintiff and consolidated plaintiff.

Robert Kieपुरa, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C. for defendant. With him on the brief were *Brian M. Boynton*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director and *Tara K. Hogan*, Assistant Director. Of counsel was *Vania Wang*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.

Robert E. DeFrancesco, III, *Alan H. Price*, and *Jake R. Frischknecht*, Wiley Rein LLP, of Washington, D.C., for defendant-intervenor, *Nucor Tubular Products Inc.*¹

Roger B. Schagrin, Wiley Rein LLP, of Washington, D.C. for defendant-intervenors *Atlas Tube* and *Searing Industries*.

OPINION

Katzmann, Judge:

The court returns to a challenge to Commerce’s determination that Korean producers of heavy walled rectangular welded carbon steel pipes and tubes (“HWR”) sold their product in the United States at below normal value in their home market, resulting in the imposition of antidumping (“AD”) duties. Before the court is Commerce’s *Final Results of Redetermination Pursuant to Court Remand* (Dep’t Commerce Dec. 22, 2020), ECF No. 70 (“*Remand Results*”), which the court ordered in *Dong-A Steel Co. v United States*, 44 CIT __, 475 F. Supp. 3d 1317 (2020) (“*Dong-A Steel I*”), so that Commerce could further explain its determination in *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea*, 84 Fed. Reg. 24,471 (Dep’t Commerce May 28, 2019), P.R. 244 (“*Final Results*”). On remand, Commerce determined under respectful protest that no particular market situation (“PMS”) existed during the

¹ Independence Tube Corp. and Southland Tube, Inc., both listed Defendant-Intervenors to this action, have been fully incorporated and subsumed into Defendant-Intervenor Nucor Tubular Products Inc. Accordingly, they are not separately represented and submit no separate briefing.

period of review (“POR”), and thus that no PMS adjustment should be applied to the cost of production (“COP”) for calculation of the weighted-average dumping margin for Plaintiff Dong-A Steel Company (“DOSCO”). *Remand Results* at 4, 7. Accordingly, Commerce calculated an 11.00 percent weighted-average dumping margin for DOSCO and recalculated a 7.89 percent review-specific average rate for Consolidated-Plaintiff Kukje Steel (“Kukje”).² *Id.* at 7. DOSCO requests that the court sustain Commerce’s *Remand Results*. Pl.’s Cmts. on Remand Redetermination at 2, Jan. 21, 2021, ECF No. 73 (“Pl.’s Br.”). Kukje, however, challenges Commerce’s *Remand Results* on the basis that its assigned review-specific rate improperly incorporates the original PMS-adjusted weighted-average dumping margin as applied to HiSteel Co., Ltd. (“HiSteel”), a Korean HWR manufacturer selected by Commerce as a mandatory respondent but not participating in this litigation. Consol.-Pl.’s Cmts. on Remand Redetermination at 2–3, Jan. 21, 2021, ECF No. 74 (“Consol.-Pl.’s Br.”). Defendant the United States (“Government”) requests that the court sustain Commerce’s *Remand Results*. Def.’s Resp. to Cmts. on Remand Redetermination at 1, Feb. 22, 2021, ECF No. 77 (“Def.’s Br.”). Defendant-Intervenor Nucor Tubular Products, Inc. (“Nucor”) objects to Commerce’s *Remand Results* on the basis that the court should reject both its conclusions in *Dong-A Steel I* and Commerce’s determination on remand and affirm Commerce’s original PMS adjustment to the COP. Def.-Inter.’s Cmts. on Remand Redetermination at 1, Jan. 21, 2021, ECF No. 72 (“Def.-Inter.’s Br.”). Defendant-Intervenors Atlas Tube and Searing Industries declined to comment on the *Remand Results*. The court concludes that Commerce’s determinations on remand were in accordance with law and the court’s remand instructions and affirms Commerce’s *Remand Results*.

BACKGROUND

The court set out the relevant legal and factual background of the proceedings in further detail in its previous opinion, *Dong-A Steel I*, 475 F. Supp. 3d at 1322–30. Information relevant to the instant opinion is set forth below.

On September 1, 2017, Commerce published a notice of opportunity to request review of an order for HRW pipe and tube from Korea for the period covering March 1, 2016, to August 31, 2017. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 Fed. Reg. 41,595,

² Both DOSCO and Kukje are Korean HWR manufacturers. Broadly speaking, HWR are carbon steel pipes and tubes that are suitable, among other purposes, for the construction of offshore structures, owing to their strength and ability to accommodate a variety of structural shapes. The nature of the subject merchandise is set out in more detail in the court’s previous opinion, *Dong-A Steel I*. See 475 F. Supp. 3d at 1321 n.1.

41,596 (Dep't Commerce Sept. 1, 2017), P.R. 3; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders*, 81 Fed. Reg. 62,865, 62,866 (Dep't Commerce Sept. 13, 2016). Following requests from domestic producers of HWR (including Nucor, both individually and as Independence Tube Corp. and Southland Tube, Inc.; Atlas Tube, a division of Zekelman Industries; and Searing Industries) (collectively, "Petitioners"), as well as from DOSCO and HiSteel, Commerce commenced its 2016–2017 administrative review of the *Order* on November 13, 2017. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 Fed. Reg. 52,268 (Dep't Commerce Nov. 13, 2017), P.R. 5; Mem. from J. Maeder to G. Taverman, re: Decision Mem. for the Prelim. Results at 2 n.3 (Dep't Commerce Oct. 3, 2018), P.R. 203 ("PDM"). For this review, Commerce selected DOSCO and HiSteel as mandatory respondents. See Mem. from A. Wood to M. Skinner, re: Selection of Resp't for Individual Review (Jan. 12, 2018), P.R. 16.

As part of their submissions, Petitioners argued that there existed a PMS in Korea that distorted the COP of Korean HWR and highlighted four factors in support of this allegation.³ Letter from Wiley Rein LLP to Sec'y Commerce, re: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Particular Market Situation Allegation and Supporting Information (Aug. 31, 2018), P.R. 160 ("Petitioners' PMS Allegation"). In its preliminary results, Commerce analyzed Petitioners' four factors and determined that the "totality of the circumstances" indicated the existence of a PMS in Korea during the POR. PDM at 13; see generally *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017*, 83 Fed. Reg. 50,892 (Dep't Commerce Oct. 10, 2018), P.R. 211. Accordingly, Commerce adjusted DOSCO's reported input costs to reflect the PMS. *Id.* at 20. After responsive briefing from Petitioners, DOSCO, and HiSteel, Commerce issued its *Final Results* in May 2019. *Final Results*; see also Mem. from G. Taverman to J. Kessler, re: Issues and Decision Mem. for the Final Results of the 2016–2017 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea (Dep't Commerce May 20, 2019), P.R. 237 ("IDM"). In its *Final Results*, Commerce sustained its earlier determination that a PMS existed with respect to the input costs for HWR from

³ Petitioners' arguments are discussed in detail in *Dong-A Steel I*. 475 F. Supp. 3d at 1326.

Korea and calculated revised weighted-average dumping margins for both DOSCO and HiSteel incorporating the PMS adjustment. IDM at 3. Specifically, Commerce calculated a weighted-average dumping margin of 20.79 percent for DOSCO and 4.74 percent for HiSteel and applied a review-specific average rate of 12.81 percent to twelve additional companies — among them, Kukje. *Final Results*, 84 Fed. Reg. at 24,472.

DOSCO initiated this litigation on June 25, 2019, challenging the portions of Commerce’s *Final Results* pertaining to the calculation and adjustments of its weighted-average dumping margin and the additional review-specific rates.⁴ Summons, ECF No. 1; Compl. at 6, ECF No. 6. Kukje commenced a separate action against the Government to challenge Commerce’s final determination, filing a summons and complaint on June 25, 2019. Kukje’s Summons, *Kukje v. United States*, No. 19–105 (CIT filed June 25, 2019), ECF No. 1; Kukje’s Compl., *Kukje*, No. 19105, ECF No. 6. On August 5, 2019, the court granted consent motions to allow Defendant-Intervenors Atlas Tube, Searing Industries, and Nucor to intervene in both cases. *Kukje*, No. 19105, ECF Nos. 28, 29; Ct. Orders Granting Consent Mot. to Intervene as Def.-Inter., ECF Nos. 23, 24. On August 6, 2019, the parties filed a motion to consolidate Kukje’s action (No. 19–105) with the lead case brought by DOSCO. Joint Mot. to Consol. Cases, ECF No. 25. The court granted the motion on August 13, 2019. ECF No. 26. On September 29, 2020, the court concluded that “Commerce’s PMS determination was not supported by substantial evidence” and that Commerce further “applied an impermissible interpretation of section 504 of the TPEA” by disregarding the plain meaning of the statute and applying the PMS adjustment in its calculation of COP. *Dong-A Steel I*, 475 F. Supp. 3d at 1332. Accordingly, the court remanded the *Final Results* to Commerce for further explanation of the PMS determination and, if applicable, recalculation of the PMS adjustment made to COP and resultant AD rates. *Id.* at 1350.

Commerce filed its *Remand Results* on December 22, 2020, concluding under respectful protest that there is “insufficient evidence of a PMS that distorts the COP of HWR.” *Remand Results* at 1. Consequently, it “recalculated the estimated weighted-average dumping margin for DOSCO without applying a PMS adjustment to the COP.” *Id.* Commerce further recalculated the review-specific average rate applicable to Kukje to incorporate DOSCO’s recalculated dumping margin, but without changes to HiSteel’s original PMS-adjusted

⁴ Many citations are to confidential filings for clarity in explaining the timeline of events. Public versions, often filed at later dates, are available on the public docket with corresponding pagination.

dumping margin. Plaintiff DOSCO, Consolidated-Plaintiff Kukje, and Defendant-Intervenor Nucor each filed comments on the *Remand Results* on January 21, 2021. Pl.’s Br.; Consol.-Pl.’s Br.; Def.-Inter.’s Br. The Government replied in support of Commerce’s redetermination on February 22, 2021. Def.’s Br. Also on February 22, 2021, DOSCO and Kukje (together, “Plaintiffs”) jointly replied in opposition to Nucor’s comments on the *Remand Results*. Reply of Pl. and Consol. Pl. to Def.-Inter.’s Br., ECF No. 78 (“Pls.’ Reply”).

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(c). The standard of review in this action is set forth in 19 U.S.C. § 1516a(b)(1)(B)(i): “[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.” The court also reviews the determinations pursuant to remand “for compliance with the court’s remand order.” *See Beijing Tianhai Indus. Co. v. United States*, 39 CIT __, __, 106 F. Supp. 3d 1342, 1346 (2015) (citations omitted).

DISCUSSION

A PMS is any circumstance that “prevents a proper comparison” between a product’s normal value and its export price. *See* 19 U.S.C. § 1677b(a)(1)(B)(ii)(III). Where a PMS exists “such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the [COP] in the ordinary course of trade,” Commerce is authorized to estimate constructed value using alternative calculation methodologies, rather than relying upon “the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country” or “the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States.” 19 U.S.C. § 1677b(a)(1)(B)(i)–(ii), (e)(3). This process involves the application of PMS-specific adjustments to Commerce’s calculation of constructed value. 19 U.S.C. § 1677b(e); *see also Dong-A Steel I*, 475 F. Supp. 3d at 1324.

In its previous opinion, the court determined that Commerce is not permitted by statute “to make PMS adjustments outside the scope of a price-to-constructed value calculation.” *Dong-A Steel I*, 475 F. Supp. 3d at 1340 (citing *Saha Thai Steel Pipe Public Co. v. United States*, 43 CIT __, __, 422 F. Supp. 3d 1363, 1368 (2019)). Rather, the court determined that the plain meaning of the statute provides only for adjustments when calculating an AD margin based on price-to-constructed value comparisons. *Id.* at 1339–41. Accordingly, the court declined to affirm Commerce’s application of PMS adjustments to the COP in its *Final Results*. *Id.* at 1337–41; IDM at 3.

Also in its previous opinion, the court rejected Commerce’s determination that a PMS existed with respect to HWR input costs such that the COP of HWR in Korea was distorted during the POR. *Dong-A Steel I*, 475 F. Supp. 3d at 1336–37. The court noted that “Commerce, by its own admission . . . , relied on substantially the same record evidence in reaching its PMS determination here” that the court had previously found to be insufficient in *Nexteel Co v. United States*, 43 CIT ___, 355 F. Supp. 3d 1336 (2019); *Nexteel Co. v. United States*, 43 CIT ___, 392 F. Supp. 3d 1276 (2019); and *Hyundai Steel Co. v. United States*, 43 CIT ___, 415 F. Supp. 3d 1293 (2019). *Id.* at 1336. As a result, the court determined that Commerce’s calculations of PMS-adjusted AD duty rates of 20.79 percent for DOSCO and 12.81 percent for Kukje were unsupported by substantial evidence. *Id.* at 1321, 1336–37. Accordingly, the court remanded for further review and explanation both Commerce’s PMS determination and its calculation of the weighted-average dumping margin and associated review-specific average rate. *Id.* at 1321, 1350.

On remand, Commerce determined under respectful protest that the record did not support the existence of a PMS with respect to the COP of HWR “in a manner that would address all of the [c]ourt’s concerns” with respect to the *Final Results. Remand Results* at 4. As a result, Commerce found that “a PMS distorting the COP of HWR did not exist during [the POR],” and did not apply a PMS adjustment in its recalculation of DOSCO’s weighted-average dumping margin. *Id.* at 4–5. It therefore determined a weighted-average dumping margin for DOSCO of 11.00 percent and an review-specific average rate for Kukje of 7.89 percent. The latter rate constituted a weighted average of the recalculated DOSCO rate and the original PMS-adjusted HiSteel rate, calculated pursuant to 19 U.S.C. § 1673d(c)(5)(A).⁵

I. The Court Affirms Commerce’s PMS Determination and Calculation of DOSCO’s Weighted-Average Dumping Margin

Plaintiffs and the Government request that the court affirm Commerce’s determination that “a PMS distorting the COP of HWR did not exist during [the POR].”⁶ *Remand Results* at 4–5; Pl.’s Br. at 2; Consol.-Pl.’s Br. at 2; Def.’s Br. at 5–7. While Defendant-Intervenor

⁵ The subsection provides specifically that “the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under [19 U.S.C. § 1677e].”

⁶ Although the Government does not contest Commerce’s determination, it notes that “[b]y complying with the court’s order under protest, Commerce preserves for appeal the arguments and positions it presented in the final determination and . . . *Remand Results.*” Def.’s Br. at 6 (quoting *Jinko Solar Co. v. United States*, 42 CIT ___, ___, 317 F. Supp. 3d 1314, 1321 n.12 (2018)).

Nucor contests Commerce’s PMS determination on remand, Nucor provides no support for its argument that a PMS existed during the relevant period that was not previously considered, and rejected, by the court in *Dong-A Steel I*.⁷ Compare Def.-Inter.’s Br. at 2–4, 18 with *Dong-A Steel I*, 475 F. Supp. 3d at 1332–1341. The court concludes that, by reconsidering the record evidence and determining that a PMS did not exist during the POR, Commerce complied with the court’s remand order in *Dong-A Steel I* and acted both in accordance with law and with the support of substantial evidence. Accordingly, the court sustains Commerce’s PMS determination.

Similarly, Plaintiffs and the Government request that the court affirm Commerce’s determination of an 11.00 percent weighted-average dumping margin for DOSCO.⁸ Pl.’s Br. at 2; Pls.’ Reply at 2; Def.’s Br. at 6. As the *Remand Results* indicate, the 11.00 percent rate was calculated by Commerce “without making the PMS adjustment to the COP” in accordance with its revised determination that no PMS existed during the POR. *Remand Results* at 7. The court concludes that by recalculating DOSCO’s weighted-average dumping margin without PMS adjustments, Commerce complied with the court’s remand order. See *Dong-A Steel I*, 475 F. Supp. 3d at 1350. The court further concludes that the revised AD rate assigned to DOSCO should be sustained as supported by substantial evidence and in accordance with law.

II. The Court Affirms Commerce’s Calculation of Kukje’s Review-Specific Average Rate

Consolidated-Plaintiff Kukje alone contests Commerce’s calculation of a 7.89 percent review-specific weighted-average rate applicable to Kukje. Consol.-Pl.’s Br. at 2. Kukje argues that the review-specific rate should reflect not the weighted average of the revised DOSCO rate and original HiSteel rate, but rather the weighted average of the revised DOSCO rate *and* a revised HiSteel rate calculated without PMS adjustments. *Id.* Kukje therefore requests that the court remand Commerce’s calculation of the review-specific average rate for

⁷ Indeed, it is Nucor’s position that “the court has impermissibly narrowed the scope of the PMS statute, and inappropriately limited Commerce’s discretion in utilizing the statute.” Def.-Inter.’s Br. at 5. For the reasons set forth in *Dong-A Steel I*, the court disagrees. 475 F. Supp. 3d 1332–37. As the arguments made by Nucor were already addressed and rejected in the court’s previous opinion, the court declines to reach Plaintiffs’ argument that Nucor failed to exhaust its administrative remedies on remand. Pls.’ Reply at 4.

⁸ Although Nucor’s request that the court “reject the remand determination and affirm Commerce’s original adjustment of costs” implicitly seeks reinstatement of the original AD rates, Nucor does not directly address the calculation of either DOSCO’s weighted-average dumping margin or Kukje’s review-specific average rate in its comments. Def.-Inter.’s Br. at 19. Accordingly, the court does not consider arguments from Nucor on either re-calculated AD rate.

replacement with a 7.56 percent rate reflecting revisions to both the DOSCO and HiSteel AD rates. *Id.* at 2, 4; see also *Draft Results of Redetermination Pursuant to Court Remand* at 5 (Dep't Commerce Nov. 23, 2020), P.R.R. 1 (calculating a 7.56 percent review-specific average rate for Kukje where both DOSCO and HiSteel's AD rates are revised to exclude the PMS adjustment). The Government argues that Commerce properly declined to recalculate HiSteel's rate in its final remand determination because HiSteel itself did not participate in this litigation "and no party challenged HiSteel's rate." Def.'s Br. at 7 (citing *Remand Results* at 2). Accordingly, the Government contends that Commerce properly calculated a 7.89 percent review-specific weighted-average rate with respect to Kukje and requests that the court affirm Commerce's *Final Results*.

Commerce properly declined to recalculate HiSteel's weighted-average dumping margin to reflect the absence of a PMS on remand. The court has established, and the parties do not dispute, that a non-participant in litigation challenging Commerce's final determination is not entitled to revised rates calculated on remand. *Capella Sales & Servs. Ltd. v. United States*, 40 CIT __, __, 180 F. Supp. 3d 1293, 1304–05 (2016), *aff'd* by 878 F.3d 1329 (Fed. Cir. 2018); and *Capella Sales & Servs. Ltd. v. United States*, 40 CIT __, __, 181 F. Supp. 3d 1255, 1262–64 (2016), *aff'd* by 878 F.3d 1329 (Fed. Cir. 2018); see also Consol.-Pl.'s Br. at 3; Def.'s Br. at 6–7. Commerce therefore acted in accordance with law by determining that it would not "recalculate[] the weighted-average dumping margin for HiSteel" in its *Final Results*, "because HiSteel did not participate in the litigation and is therefore not entitled to the benefit of the recalculation." *Remand Results* at 4 (citation omitted).

Thus, given HiSteel's non-participation, Commerce's calculation of a 7.89 percent review-specific rate for Kukje was in accordance with law and supported by substantial evidence. Under 19 U.S.C. § 1673d(c)(5)(A), the all-others rate applicable to Kukje consists of the "weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely under [19 U.S.C. § 1677e]." Neither Kukje nor the Government disputes that Commerce correctly applied a revised 11.00 percent AD rate to DOSCO and the original 4.74 percent AD rate to HiSteel on remand. Consol.-Pl.'s Br. at 3; Def.'s Br. at 6–7. The statute requires that Commerce apply a review-specific rate to Kukje consisting of the weighted average of DOSCO's uncontested 11.00 percent rate and HiSteel's uncontested 4.74 percent rate. 19 U.S.C. § 1673d(c)(5)(A). This is in fact what Commerce did. *Remand Results* at

4, 7; Mem. from Alice Maldonado to File, re: Calculation of the Review-Specific Average Rate for the Final Results of Redetermination at 3 (Dep't Commerce Dec. 21, 2020) P.R.R. 9. Thus, the court concludes that Commerce acted in accordance with law and with the support of substantial evidence in assigning a 7.98 percent review-specific rate to Kukje.

Nor is the court convinced by Kukje's argument that its own participation in the litigation entitles it to receive not only the benefit of DOSCO's recalculated AD rate but also the benefit of a theoretical recalculated HiSteel rate reflecting the exclusion of Commerce's PMS adjustment. Consol.-Pl.'s Br. at 3. As the Government notes, Kukje did not explicitly request that the court review HiSteel's AD rate in its complaint, or in its opening brief. Def.'s Br. at 9 (citing Kukje's Compl. at 10; Kukje's Mot. for J. on Agency R., Nov. 6, 2019, ECF No. 38 ("Consol.-Pl.'s Rule 56.2 Br.")). Indeed, Kukje mentioned HiSteel only once in its opening brief, identifying it as a mandatory respondent. Consol.-Pl.'s Rule 56.2 Br. at 3. Rather than arguing for the recalculation of HiSteel's AD rate, Kukje stated that "[b]ecause Commerce's calculation of the final [AD] duty rate assigned to DOSCO was unsupported by substantial evidence and otherwise not in accordance with law, Commerce's calculation of the review-specific average rate assigned to Kukje Steel . . . likewise was unsupported by substantial evidence and otherwise not in accordance with law," *id.* at 5, and requested only that the court extend to Kukje "any relief granted to DOSCO as a result of this appeal," *id.* at 3. As the court has previously indicated, "[i]t is axiomatic that any claim which is not pressed is deemed abandoned." *De Laval Separator Co. v. United States*, 1 CIT 144, 146, 511 F. Supp. 810, 812 (1981); *see also Timken Co. v. United States*, 26 CIT 1072, 1073 n.2, 240 F. Supp. 2d 1228, 1231 n.2 (2002) (rejecting party's attempt to proffer arguments outside the scope of its Rule 56.2 motion); *Novosteel SA v. United States*, 284 F.3d 1261, 1274 (Fed. Cir. 2002) (finding that a party waived its argument by failing to present the argument in its principal summary judgment brief). Consequently, the court finds that Kukje's argument for the adjustment of HiSteel's AD rate has been waived and affirms Commerce's assignment of a 7.98 percent review-specific rate to Kukje on remand.

CONCLUSION

For the reasons stated, the court affirms Commerce's *Remand Results*. Judgment will enter accordingly in favor of Defendant.

SO ORDERED.

Dated: June 24, 2021

New York, New York

/s/ Gary S. Katzmann

JUDGE

Slip Op. 21–80

BRAL CORPORATION, Plaintiff, v. UNITED STATES, Defendant.

Before: Jennifer Choe-Groves, Judge
Court No. 20–00154

[Granting Defendant’s Partial Motion to Dismiss.]

Dated: June 29, 2021

Robert Kevin Williams, Clark Hill PLC, of Chicago, IL, for Plaintiff BRAL Corporation.

Justin R. Miller, Attorney-in-Charge, and *Alexander J. Vanderweide*, Senior Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, N.Y., for Defendant United States. With them on the brief were *Brian M. Boynton*, Acting Assistant Attorney General, and *Jeanne E. Davidson*, Director. Of counsel on the brief was *Sabahat Chaudhary*, Office of Chief Counsel, U.S. Customs and Border Protection.

OPINION AND ORDER**Choe-Groves, Judge:**

Plaintiff BRAL Corporation (“Plaintiff”) filed this action pursuant to 28 U.S.C. § 1581(a) contesting the denial of its protests by U.S. Customs and Border Protection (“Customs”) concerning the assessment of duties on twelve entries of plywood imported from the People’s Republic of China (“China”). *See* Compl. at 1, ECF No. 7. Defendant United States (“Defendant”) filed Defendant’s Partial Motion to Dismiss, ECF No. 11 (“Defendant’s Motion”), on May 3, 2021. Defendant requests that the court dismiss one of the twelve entries, Entry No. 949–0008813–2, for lack of subject matter jurisdiction under USCIT Rule 12(b)(1) and 28 U.S.C. § 1581(a). *See* Def.’s Mem. Supp. Partial Mot. Dismiss at 1, ECF No. 11 (“Def. Mem.”). Plaintiff did not file a response to Defendant’s Motion. For the following reasons, the court grants Defendant’s Motion to dismiss Entry No. 949–0008813–2.

BACKGROUND

This action concerns twelve entries of plywood imported from China by Plaintiff between 2017 and 2018. *See* Summons at 1–3, ECF No. 1. Customs liquidated three of Plaintiff’s entries on May 3, 2019. Def. Mem. at 2. Plaintiff filed Protest No. 4101–19–100494 on October 25, 2019. *See* Summons at 3. Customs denied the protest on March 5, 2020. *Id.*

The remaining nine entries, including Entry No. 949–0008813–2, were deemed liquidated by operation of law. *See* Def. Mem. at 2; Entries, ECF No. 6. Customs reliquidated these nine entries on December 20, 2019 (“December 20 Reliquidation”). *Id.*; *see* Summons at 3. Plaintiff filed Protest No. 4101–19–100808 against these reliquidations on December 23, 2019. *See* Summons at 1–3. Customs denied

the protest on March 5, 2020. *Id.* Customs reliquidated one entry, Entry No. 949–0008813–2, again on March 13, 2020 (“March 13 Reliquidation”). *See* Def. Mem. at 2; Summons at 1. Plaintiff did not protest the March 13 Reliquidation of Entry No. 949–0008813–2. *See* Summons at 1; Def. Mem. at 5.

JURISDICTION

The U.S. Court of International Trade, like all federal courts, is one of limited jurisdiction and is “presumed to be ‘without jurisdiction’ unless ‘the contrary appears affirmatively from the record.’” *DaimlerChrysler Corp. v. United States*, 442 F.3d 1313, 1318 (Fed. Cir. 2006) (quoting *King Iron Bridge & Mfg. Co. v. Otoe Cnty.*, 120 U.S. 225, 226 (1887)). The party invoking jurisdiction must allege sufficient facts to establish the court’s jurisdiction independently for each claim asserted. *Id.* at 1318–19 (citing *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936)); *see also Norsk Hydro Can., Inc. v. United States*, 472 F.3d 1347, 1355 (Fed. Cir. 2006). If the court determines at any time that it lacks subject matter jurisdiction, it must dismiss the action. *See* USCIT R. 12(h)(3).

DISCUSSION

Plaintiff filed this action asserting jurisdiction under 28 U.S.C. § 1581(a). *See* Compl. at 1. Defendant asserts that the court lacks subject matter jurisdiction over Entry No. 949–0008813–2 because Plaintiff did not protest the March 13 Reliquidation of the entry. Def. Mem. at 1. Defendant requests that the court sever and dismiss Entry No. 949–0008813–2 from this action under USCIT R. 12(b)(1). *Id.*

Pursuant to 28 U.S.C. § 1581(a), the U.S. Court of International Trade has “exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.” 28 U.S.C. § 1581(a). A party may protest a decision made by Customs within 180 days after the date of liquidation or reliquidation of the entry. 19 U.S.C. § 1514(c)(3)(A). The statute directs Customs to assess the protest in a timely manner. *See* 19 U.S.C. § 1515. Jurisdiction under § 1581(a) is conditioned upon the denial of a protest challenging a decision made by Customs that is filed in accordance with 19 U.S.C. § 1514. If an importer does not avail itself of the protest process, the decision made by Customs “shall be final and conclusive upon all persons,” 19 U.S.C. § 1514(a), and judicial review is statutorily precluded. *See* 28 U.S.C. § 1581(a); *see also Hartford Fire Ins. Co. v. United States*, 544 F.3d 1289, 1292 (Fed. Cir. 2008).

When Customs reliquidates entries, the reliquidation vacates and is substituted for the original liquidation. *Sparks Belting Co. v.*

United States, 34 CIT 662, 667 (2010); see also *United States v. Great Am. Ins. Co.*, 41 CIT __, __, 229 F. Supp. 3d 1306, 1319 (2017); *AutoAlliance Int'l, Inc. v. United States*, 357 F.3d 1290, 1294 (Fed. Cir. 2004) (stating that “the original liquidation is nullified only as to the question with which the reliquidation dealt”) (internal quotation marks and citation omitted). A party must protest Customs’ reliquidation of entries as a prerequisite to seeking judicial review of the reliquidation. See *Sparks Belting*, 34 CIT at 667; *SSk Indus. v. United States*, 24 CIT 319, 323 (2000). Failure to protest reliquidation renders the reliquidation final and conclusive and unreviewable by this Court. See *Sparks Belting*, 34 CIT at 667–68 (citing *Mitsubishi Elecs. Am., Inc. v. United States*, 18 CIT 929, 931 (1994)); see also *United States v. Am. Home Assurance Co.*, 789 F.3d 1313, 1323 (Fed. Cir. 2015) (stating that the importer was required to challenge reliquidations to prevent them from becoming final and conclusive regardless of whether the reliquidations were legal).

In this case, Customs denied Plaintiff’s protest of the December 20 Reliquidation of Entry No. 949–0008813–2. See Summons at 1. Entry No. 949–0008813–2 was reliquidated again on March 13, 2020. See *id.* When Customs reliquidated Entry No. 949–0008813–2, the March 13 Reliquidation vacated and was substituted for the original liquidation (i.e. the December 20 Reliquidation). Plaintiff did not protest the March 13 Reliquidation. Plaintiff seeks judicial review of the March 13 Reliquidation of Entry No. 949–0008813–2. See *id.* Because Plaintiff did not protest the March 13 Reliquidation, Plaintiff has not met the prerequisite to obtain judicial review before this court. The unprotested March 13 Reliquidation of Entry No. 949–0008813–2 is final and conclusive and is unreviewable by this court.

CONCLUSION

For the foregoing reasons, the court concludes that it lacks subject matter jurisdiction under 28 U.S.C. § 1581(a) over Entry No. 949–0008813–2 because there was no protest, and no protest denial, of the March 13 Reliquidation of the entry. Accordingly, it is hereby

ORDERED that Defendant’s Partial Motion to Dismiss, ECF No. 11, is granted; and it is further

ORDERED that Entry No. 949–0008813–2 is severed and dismissed from this action.

Dated: June 29, 2021

New York, New York

/s/ Jennifer Choe-Groves

JENNIFER CHOE-GROVES, JUDGE

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