

U.S. Customs and Border Protection


CBP Dec. 22–13

**WESTERN HEMISPHERE TRAVEL INITIATIVE:
DESIGNATION OF AN APPROVED NATIVE AMERICAN
TRIBAL CARD ISSUED BY THE KICKAPOO TRADITIONAL
TRIBE OF TEXAS AS AN ACCEPTABLE DOCUMENT TO
DENOTE IDENTITY AND CITIZENSHIP FOR ENTRY IN
THE UNITED STATES AT LAND AND SEA PORTS OF
ENTRY**

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Commissioner of U.S. Customs and Border Protection is designating an approved Native American tribal card issued by the Kickapoo Traditional Tribe of Texas to U.S. citizen tribal members as an acceptable travel document for purposes of the Western Hemisphere Travel Initiative. The approved card may be used to denote identity and citizenship of Kickapoo Traditional Tribe of Texas members entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

DATES: This designation will become effective on June 24, 2022.

FOR FURTHER INFORMATION CONTACT: Adele Fasano, Executive Director, Planning, Program Analysis, and Evaluation, Office of Field Operations, U.S. Customs and Border Protection, via email at Adele.Fasano@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Western Hemisphere Travel Initiative

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, as amended, required the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a plan to require U.S. citizens and individuals for whom documentation requirements have previously

been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)) to present a passport or other document or combination of documents as the Secretary deems sufficient to denote identity and citizenship for all travel into the United States. *See* 8 U.S.C. 1185 note. On April 3, 2008, the Department of Homeland Security (DHS) and the Department of State promulgated a joint final rule, effective on June 1, 2009, that implemented the plan known as the Western Hemisphere Travel Initiative (WHTI) at U.S. land and sea ports of entry. *See* 73 FR 18384 (the WHTI Land and Sea Final Rule). The rule amended various sections in the Code of Federal Regulations (CFR), including 8 CFR 212.0, 212.1, and 235.1.¹ The WHTI Land and Sea Final Rule specifies the documents that U.S. citizens and nonimmigrants from Canada, Bermuda, and Mexico are required to present when entering the United States at land and sea ports of entry.

Under the WHTI Land and Sea Final Rule, one type of citizenship and identity document that may be presented upon entry to the United States at land and sea ports of entry from contiguous territory or adjacent islands² is a Native American tribal card that has been designated by the Secretary as an acceptable document to denote identity and citizenship, pursuant to section 7209 of IRTPA. *See* 8 U.S.C. 1185 note. Specifically, 8 CFR 235.1(e), as amended by the WHTI Land and Sea Final Rule, provides that once the Secretary of Homeland Security designates a U.S. qualifying tribal entity document as an acceptable document to denote identity and citizenship for the purposes of entering the United States, Native Americans may present such designated tribal cards upon entering or seeking admission to the United States according to the terms of the voluntary agreement entered between the Secretary of Homeland Security and the tribe. It provides that the Secretary of Homeland Security will announce the designation of tribal cards as acceptable travel documents for entering the United States by publication of a notice in the **Federal Register**. It further provides that a list of the documents designated under this section will also be made available to the public.

¹ Part 212 of title 8 of the Code of Federal Regulations details the documentary requirements for nonimmigrants seeking admission into the United States; 8 CFR 235.1 provides for the scope of examination of all persons seeking admission into the United States.

² “Adjacent islands” is defined in 8 CFR 212.0 as “Bermuda and the islands located in the Caribbean Sea, except Cuba.” This definition applies to 8 CFR 212.1 and 235.1.

Under 8 CFR 212.0, a U.S. qualifying tribal entity is defined as a tribe, band, or other group of Native Americans formally recognized by the United States Government which agrees to meet WHTI document standards.³ Native American tribal cards are also referenced in 8 CFR 235.1(b), which lists the documents that U.S. citizens may use to establish identity and citizenship when entering the United States. *See* 8 CFR 235.1(b)(7).

The Secretary of Homeland Security has delegated to the Commissioner of U.S. Customs and Border Protection (CBP) the authority to designate certain documents as acceptable border crossing documents for persons arriving in the United States by land or sea from within the Western Hemisphere, including certain U.S. Native American tribal cards. *See* DHS Delegation Number 7105 (Revision 00), dated January 16, 2009.

Tribal Card Program

The WHTI Land and Sea Final Rule allowed U.S. federally recognized Native American tribes to enter into agreements with CBP to develop tribal ID cards that can be designated as acceptable to establish identity and citizenship when entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP works with various U.S. federally recognized Native American tribes to facilitate the development of WHTI-compliant Native American tribal cards.⁴ As part of the process, CBP and the Native American tribe will enter into an agreement that specifies the requirements for developing and issuing such cards, including a testing and auditing process that ensures that the cards are produced and issued in accordance with the terms of the agreement.

After a tribe produces cards in accordance with the specified requirements, and after successful testing and auditing by CBP of the cards and program, the Secretary or the Commissioner of CBP may designate the Native American tribal card as an acceptable WHTI-compliant document for the purpose of establishing identity and citizenship when entering the United States by land or sea from contiguous territory or adjacent islands. Such designation will be announced by publication of a notice in the **Federal Register**. More information about WHTI-compliant documents is available at www.cbp.gov/travel.

³ This definition applies to 8 CFR 212.1 and 235.1.

⁴ The Native American tribal cards qualifying to be a WHTI-compliant document for border crossing purposes are commonly referred to as “Enhanced Tribal Cards” or “ETCs.”

The Pascua Yaqui Tribe of Arizona became the first Native American tribe to have its Native American tribal card designated as a WHTI-compliant document by the Commissioner of CBP. This designation was announced in a notice published in the **Federal Register** on June 9, 2011 (76 FR 33776). Subsequently, the Commissioner of CBP announced the designation of several other Native American tribal cards as WHTI-compliant documents. *See, e.g.*, the Native American tribal cards of the Puyallup Tribe of Indians, 84 FR 67278 (December 9, 2019); the Swinomish Indian Tribal Community, 84 FR 70984 (December 26, 2019); the Confederated Tribes of the Colville Reservation, 85 FR 31796 (May 27, 2020); and the Muscogee (Creek) Nation, 86 FR 6664 (January 22, 2021).

Kickapoo Traditional Tribe of Texas WHTI-Compliant Native American Tribal Card Program

The Kickapoo Traditional Tribe of Texas has voluntarily established a program to develop a WHTI-compliant Native American tribal card that denotes tribal identity and U.S. citizenship. On September 2, 2016, CBP and the Kickapoo Traditional Tribe of Texas entered into a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate whether its Native American tribal cards could be used for border crossing purposes. Pursuant to this MOA, the cards are issued to members of the Kickapoo Traditional Tribe of Texas who can establish their identity, tribal membership, and U.S. citizenship. The cards incorporate physical security features acceptable to CBP, as well as facilitative technology allowing for the electronic validation by CBP of the tribal members' identity, citizenship, and tribal membership. On August 15, 2017, CBP and the Kickapoo Traditional Tribe of Texas entered into a Service Level Agreement that was an addendum to the April 1, 2010 Pascua Yaqui Tribe Service Level Agreement. The addendum provides that the Pascua Yaqui Tribe would serve as the Information Technology Coordinator and the manufacturer of the tribal card on behalf of the Kickapoo Traditional Tribe of Texas.⁵

CBP has tested the cards developed by the Kickapoo Traditional Tribe of Texas pursuant to the above MOA and related agreements. It has also performed an audit of the tribe's card program. On the basis of these tests and audit, CBP has determined that the Native American tribal cards meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP's continued accep-

⁵ The Interconnection Service Agreement entered into by CBP and the Pascua Yaqui Tribe on December 19, 2018, which addresses individual and organizational security responsibilities for the protection and handling of unclassified information, also applies with respect to the Kickapoo Traditional Tribe of Texas Native American tribal cards.

tance of the Native American tribal cards as a WHTI-compliant document is conditional on compliance with the MOA and related agreements.

It is voluntary for Native American tribal members to use WHTI-compliant tribal cards as an acceptable travel document. If a tribal member is denied a WHTI-compliant Native American tribal card, or otherwise chooses not to use a Native American tribal card, he or she may still apply for a passport or other WHTI-compliant document.

Designation

This notice announces that the Commissioner of CBP designates the Native American tribal card issued by the Kickapoo Traditional Tribe of Texas in accordance with the MOA and related agreements as an acceptable WHTI-compliant document pursuant to section 7209 of the IRTPA and 8 CFR 235.1(e). In accordance with these provisions, the approved card, if valid and lawfully obtained, may be used to denote identity and U.S. citizenship of Kickapoo Traditional Tribe of Texas members for the purpose of entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

Commissioner Chris Magnus, having reviewed and approved this document, has delegated the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Dated: June 21, 2022.

ROBERT F. ALTNEU,

Director,

*Regulations & Disclosure Law, Division,
Regulations & Rulings, Office of Trade,
U.S. Customs and Border Protection.*

[Published in the Federal Register, June 24, 2022 (85 FR 37879)]

AFRICAN GROWTH AND OPPORTUNITY ACT (AGOA) TEXTILE CERTIFICATE OF ORIGIN

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information

collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than August 23, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0082 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov*.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: African Growth and Opportunity Act (AGOA) Textile Certificate of Origin.

OMB Number: 1651–0082.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with an increase in burden hours due to revised agency estimates, there is no change to the information collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: The African Growth and Opportunity Act (AGOA) was adopted by the U.S. with the enactment of the Trade and Development Act of 2000 (Pub. L. 106–200). The objectives of AGOA are (1) to provide for extension of duty-free treatment under the Generalized System of Preferences (GSP) to import sensitive articles normally excluded from GSP duty treatment, and (2) to provide for the entry of specific textile and apparel articles free of duty and free of any quantitative limits from eligible countries of sub-Saharan Africa.

For preferential treatment of textile and apparel articles under AGOA, the exporter or producer is required to prepare a certificate of origin and provide it to the importer. The certificate of origin includes information such as contact information for the importer, exporter and producer; the basis for which preferential treatment is claimed; and a description of the imported merchandise. The importers are required to have the certificate in their possession at the time of the claim, and to provide it to Customs and Border Protection (CBP) upon request. The collection of this information is provided for in 19 CFR 10.214, 10.215, and 10.216.

Instructions for complying with this regulation are posted on *CBP.gov* website at: <https://www.cbp.gov/trade/rulings/informed-compliance-publications>.

This collection of information applies to the importing and trade community who are familiar with import procedures and with the CBP regulations.

Type of Information Collection: AGOA Textile Certificate of Origin.

Estimated Number of Respondents: 68.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 68.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 23 hours.

Dated: June 21, 2022.

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

[Published in the Federal Register, June 24, 2022 (85 FR 37881)]

**DECLARATION FOR FREE ENTRY OF UNACCOMPANIED
ARTICLES (CBP FORM 3299)**

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

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

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

DATES: Comments are encouraged and must be submitted (no later than August 23, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0014 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov*.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regard-

ing this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration for Free Entry of Unaccompanied Articles.

OMB Number: 1651-0014.

Form Number: CBP Form 3299.

Current Actions: This submission is being made to extend the expiration date with no changes to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses and Individuals.

Abstract: 19 U.S.C. 1498 provides that when personal and household effects enter the United States but do not accompany the owner or importer on his/her arrival in the country, a declaration is made on CBP Form 3299, Declaration for Free Entry of Unaccompanied Articles. The information on this form is needed to support a claim for duty-free entry for these effects. This form is provided for by 19 CFR 148.6, 148.52, 148.53 and

148.77. CBP Form 3299 is accessible at: https://www.cbp.gov/document/forms/form-3299-declaration-free-entry-unaccompanied-articles?language_content_entity=en.

Type of Information Collection: Form 3299.

Estimated Number of Respondents: 150,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 150,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 112,5000.

Dated: June 21, 2022.

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

[Published in the Federal Register, June 24, 2022 (85 FR 37882)]

EXPORTATION OF USED SELF-PROPELLED VEHICLES

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

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

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

DATES: Comments are encouraged and must be submitted (no later than August 29, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0054 in the subject line and the agency name. Please use the following method to submit comments:

Email: Submit comments to: CBP_PRA@cbp.dhs.gov.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protec-

tion, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Exportation of Used Self-Propelled Vehicles.

OMB Number: 1651-0054.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the collection and a decrease in burden.

Type of Review: Extension (with change).

Affected Public: Individuals and Businesses.

Abstract: U.S. Customs and Border Protection (CBP) regulations require an individual attempting to export a used self-propelled vehicle to furnish documentation to CBP at the port of export. Exportation of a vehicle is permitted only upon

compliance with these requirements. The required documentation includes, but is not limited to, a Certificate of Title or a Salvage Title, the Vehicle Identification Number (VIN), a Manufacturer's Statement of Origin, etc. CBP will accept originals or certified copies of Certificate of Title. The purpose of this information is to help ensure that stolen vehicles or vehicles associated with other criminal activity are not exported.

Collection of this information is authorized by 19 U.S.C. 1627a, which provides CBP with authority to impose export reporting requirements on all used self-propelled vehicles. It is also authorized by Title IV, Section 401 of the Anti-Car Theft Act of 1992, 19 U.S.C. 1646c, which requires all persons exporting a used self-propelled vehicle to provide to CBP, at least 72 hours prior to export, the VIN and proof of ownership of each automobile. This information collection is provided for by 19 CFR part 192. Further guidance regarding these requirements is provided at: <https://www.cbp.gov/trade/basic-import-export/export-docs/motor-vehicle>.

New Change

Respondents are now able to submit supporting documentation through the Document Image System (DIS).

Type of Information Collection: Exportation of Self-Propelled Vehicles.

Estimated Number of Respondents: 750,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 750,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 62,500.

Dated: June 24, 2022.

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

[Published in the Federal Register, June 30, 2022 (85 FR 39107)]



ACCREDITATION OF COMMERCIAL TESTING LABORATORIES AND APPROVAL OF COMMERCIAL GAUGERS

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

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

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

DATES: Comments are encouraged and must be submitted no later than August 29, 2022 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0053 in the subject line and the agency name. Please use the following method to submit comments:

Email: Submit comments to: *CBP_PRA@cbp.dhs.gov*.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are

to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers.

OMB Number: 1651-0053.

Form Number: CBP Form 6478.

Current Actions: This submission is being made to extend the expiration date with a decrease to the burden hours.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: Commercial laboratories seeking to become a Customs and Border Protection (CBP) Accredited Laboratory and commercial gaugers seeking to become a CBP Approved Gauger must submit the information specified in 19 CFR 151.12 and 19 CFR 151.13, respectively, to CBP on CBP Form 6478. After the initial accreditation and/or approval, a private company may apply to include additional facilities under its accreditation and/or approval by submitting a formal written request to CBP. This application process is authorized by Section 613 of Public Law 103-182 (North American Free Trade Agreement Implementation Act), codified at 19 U.S.C. 1499, which directs CBP to establish a procedure to accredit privately owned testing laboratories. The information collected is used by CBP in deciding whether to approve individuals or businesses desiring to measure bulk products or to analyze importations. Instructions for completing these applications are accessible at: <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

CBP Form 6478 is accessible at: <https://www.cbp.gov/sites/default/files/assets/documents/2022-May/CBP%20Form%206478.pdf>.

Type of Information Collection: Application.

Estimated Number of Respondents: 8.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 8.

Estimated Time per Response: 75 minutes.

Estimated Total Annual Burden Hours: 10.

Dated: June 24, 2022.

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

[Published in the Federal Register, June 30, 2022 (85 FR 39107)]



COUNTRY OF ORIGIN MARKING REQUIREMENTS FOR CONTAINERS OR HOLDERS

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

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

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

DATES: Comments are encouraged and must be submitted (no later than August 29, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0057 in the subject line and the agency name. Please use the following method to submit comments:

Email: Submit comments to: *CBP_PRA@cbp.dhs.gov*.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Country of Origin Marking Requirements for Containers or Holders.

OMB Number: 1651-0057.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Section 304 of the Tariff Act of 1930, as amended, 19 U.S.C. 1304, requires each imported article of foreign origin, or its container, to be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article or container permits, with the English name of the country of origin. The marking informs the ultimate purchaser in the United States of the country of origin of the article or its container. The marking requirements for containers or holders of imported merchandise are provided for by 19 CFR 134.22(b).

The respondents to these requirements collection are members of the trade community who are familiar with CBP requirements and regulations.

Type of Information Collection: Country of Origin Marking.

Estimated Number of Respondents: 250.

Estimated Number of Annual Responses per Respondent: 40.

Estimated Number of Total Annual Responses: 10,000.

Estimated Time per Response: 15 seconds.

Estimated Total Annual Burden Hours: 41.

Dated: June 27, 2022.

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

[Published in the Federal Register, June 30, 2022 (85 FR 39108)]



USER FEES

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

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

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

DATES: Comments are encouraged and must be submitted (no later than August 29, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0052 in the subject line and the agency name. Please use the following method to submit comments:

Email: Submit comments to: *CBP_PRA@cbp.dhs.gov*.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number

202–325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: User Fees.

OMB Number: 1651–0052.

Form Number: CBP Form 339A, 339C and 339V.

Current Actions: This submission is being made to extend the expiration date with a change to the annual burden hours previously reported. There is no change to the information collected.

Type of Review: Extension (with change).

Affected Public: Carriers.

Abstract: The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272, 100 Stat. 82; 19 U.S.C. 58c), as amended, authorizes the collection of user fees by U.S. Customs and Border Protection (CBP). The collection of these fees requires submission of information from the party remitting

the fees to CBP. This collection of information is provided for by 19 CFR 24.22. In certain cases, this information is submitted on one of three forms including the CBP Form 339A for payment upon arrival or prepayment of the annual user fee for a private aircraft (19 CFR 24.22(e)(1) and (2)), CBP Form 339C for prepayment of the annual user fee for a commercial vehicle (19 CFR 24.22(c)(3)), and CBP Form 339V for payment upon arrival or prepayment of the annual user fee for a private vessel (19 CFR 24.22(e)(1) and (2)). All forms can be accessed at: https://www.cbp.gov/newsroom/publications/forms?title_1=339.

The information on these forms may also be filed electronically at: <https://dtops.cbp.dhs.gov/>.

Similarly, as authorized by the COBRA, as amended, CBP collects fees from each carrier or operator using an express consignment carrier facility (ECCF) or a centralized hub facility as provided in 19 CFR 24.23(b)(4). The payment must be made to CBP on a quarterly basis and must cover the individual fees for all subject transactions that occurred during a calendar quarter. 19 CFR 24.23(b)(4)(i). The information set forth in 19 CFR 24.23(b)(4)(iii)(B) must be included with the quarterly payment (ECCF Quarterly Report). In cases of overpayments, carriers or operators using an ECCF or a centralized hub facility may send a request to CBP for a refund in accordance with 19 CFR 24.23(b)(4)(iii)(C). This request must specify the grounds for the refund.

In addition, CBP requires a prospective ECCF to include a list of all carriers or operators intending to use the facility, as well as other information requested in the application for approval of the ECCF in accordance with 19 CFR 128.11(b)(2). ECCFs are also required to provide to CBP at the beginning of each calendar quarter, a list of all carriers or operators currently using the facility and notify CBP whenever a new carrier or operator begins to use the facility or whenever a carrier or operator ceases to use the facility in accordance with 19 CFR 128.11(b)(7)(iv).

Type of Information Collection: Form 339A.

Estimated Number of Respondents: 35,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 35,000.

Estimated Time per Response: 16 minutes.

Estimated Total Annual Burden Hours: 9,333.

Type of Information Collection: Form 339C Vehicles.

Estimated Number of Respondents: 80,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 80,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 26,667.

Type of Information Collection: Form 339V.

Estimated Number of Respondents: 16,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 16,000.

Estimated Time per Response: 16 minutes.

Estimated Total Annual Burden Hours: 4,267.

Type of Information Collection: ECCF Quarterly Report.

Estimated Number of Respondents: 18.

Estimated Number of Annual Responses per Respondent: 4.

Estimated Number of Total Annual Responses: 72.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 144.

Type of Information Collection: ECCF Application and List of Couriers.

Estimated Number of Respondents: 3.

Estimated Number of Annual Responses per Respondent: 4.

Estimated Number of Total Annual Responses: 12.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 6.

Type of Information Collection: ECCF Refund Request.

Estimated Number of Respondents: 0.

Estimated Number of Annual Responses per Respondent: 0.

Estimated Number of Total Annual Responses: 0.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 0.

Dated: June 27, 2022.

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

GENERAL NOTICE

19 CFR PART 177

REVOCACTION OF A RULING LETTER AND REVOCACTION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A TIMING CHAIN TENSIONER

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 timing chain tensioner.

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 timing chain tensioner 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. 56, No. 20, on May 25, 2022. 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 September 11, 2022.

FOR FURTHER INFORMATION CONTACT: Nataline Viray-Fung, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at nataline.viray-fung@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. 50, No. 20, on May 25, 2022, proposing to revoke one ruling letter pertaining to the tariff classification of a timing chain tensioner. 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 N264870, CBP classified a timing chain tensioner in heading 8708, HTSUS, specifically in subheading 8708.99.81, HTSUS, which provides for "Parts and accessories of motor vehicles of heading 8701 to 8705: Other parts and accessories: Other: Other: Other: Other: Other." CBP has reviewed NY N264870 and has determined the ruling letter to be in error. It is now CBP's position that the timing chain tensioner is properly classified, in heading 8409, HTSUS, specifically in subheading 8409.91.50, HTSUS, which provides for "Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N264870 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H316286, 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*.

GREGORY CONNOR
for
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H316286

June 28, 2022

CLA-2 OT:RR:CTF:EMAIN H316286 NVF

CATEGORY: Classification

TARIFF NO.: 8409.91.50

YOUNG-BIN OH
HYUNDAI MOTOR COMPANY
231, YANGJAE 2-DONG,
SEOCHO-GU, SEOUL
SOUTH KOREA

RE: Revocation of NY N264870; Timing chain tensioner

DEAR YOUNG-BIN OH:

This ruling is in reference to New York Ruling Letter (“NY”) N264870, dated June 1, 2015, regarding the classification of a timing chain tensioner under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY N264870, U.S. Customs and Border Protection (“CBP”) classified the timing chain tensioner in subheading 8708.99.81, HTSUS, which provides for, “Parts and accessories of motor vehicles of heading 8701 to 8705: Other parts and accessories: Other: Other: Other: Other: Other.” Upon reconsideration, CBP has determined that NY N264870 is in error. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 56, No. 20, on May 25, 2022. No comments were received in response to that notice.

FACTS:

In NY N264870 the subject merchandise is described as used to control the tension in a timing chain and consisting of a steel housing, a spring, a ratchet ring and a plunger. In controlling the tension of the timing chain, the tensioner performs a dampening function, maintaining the stability of stretched chain during operation. In NY N264870, CBP classified the timing chain assembly in subheading 8708.99.81, HTSUS as a part of a motor vehicle.

ISSUE:

Whether the timing chain tensioner is classified as a part of an engine under heading 8409, HTSUS, or as a part of a motor vehicle under heading 8708, HTSUS.

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 subheadings under consideration are as follows:

- 8409 Parts suitable for use solely or principally with the engines of heading 8407 or 8408
- 8708 Parts and accessories of the motor vehicles of headings 8701 to 8705

Note 2(e) to Section XVII, which includes Chapter 87, states in pertinent part that:

The expressions “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable for the goods of this section: Machines or apparatus of headings 8401 to 8479, or parts thereof, other than the radiators for the articles of this section.

Therefore, before we can classify the timing chain tensioner under heading 8708, we must first determine whether it is classified under heading 8409 as a part of an engine.

The term “part” is not defined in the HTSUS. In the absence of a statutory definition, the courts have fashioned two distinct but reconcilable tests for determining whether a particular item qualifies as a part for tariff classification purposes. See *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997). Under the first test, articulated in *United States v. Willoughby Camera Stores*, 21 C.C.P.A. 322 (1933), an imported item qualifies as a part only if can be described as an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 779. Pursuant to the second test, set forth in *United States v. Pompeo*, 43 C.C.P.A. 9 (1955), a good is a “part” if it is “dedicated solely for use” with a particular article and, “when applied to that use...meets the Willoughby test.” *Bauerhin*, 110 F.3d at 779 (citing *Pompeo*, 43 C.C.P.A. at 14); *Ludvig Svensson, Inc. v. United States*, 63 F. Supp. 2d 1171, 1178 (Ct. Int’l Trade 1999) (holding that a purported part must satisfy both the *Willoughby* and *Pompeo* tests). An item is not a part if it is “a separate and distinct commercial entity.” *Bauerhin*, 110 F.3d at 779.

For tariff classification purposes, a spark-ignition internal combustion engine of heading 8407 consists only of certain components. See HQ 963386 (June 16, 1999) (accelerator and throttle cables are not part of an engine). The primary components of an engine of heading 8407 generally consist of: a cylinder, piston, connecting-rod, crankshaft, flywheel, inlet and exhaust valves. In order for an engine to function, the piston compresses a mixture of air and fuel in the cylinder and the fuel mixture ignites inside the cylinder. Thus, parts of engines of heading 8407 are limited to the components that directly contribute to the function of internal combustion.

In this case, you state that the cam shaft in an engine is used to manually open and close the air intake and exhaust valves of an automobile engine, and that the cam shaft is operated by the timing chain. With the continued use of the timing chain, it is gradually stretched, and the opening and closing time of the valve will be changed accordingly, eventually causing engine failure. To prevent this from happening, the tensioner is needed to control the tension of the timing chain and prevent it from causing engine failure. Therefore, the timing chain tensioner is an integral, constituent part of an engine of heading 8407. If the timing chain does not function properly, power cannot be transferred to the camshafts in the precise ratio that is required.* Similarly, without the precise functioning of the timing chain, the engine valves will not open and close properly and the engine will fail. Without the timing chain tensioner, the timing chain cannot function, and the engine cannot properly

* A timing chain performs the same function as a timing belt but is made of metal rather than rubber.

ignite the fuel mixture inside the cylinder. Therefore, the timing chain tensioner is a part of an engine of heading 8407.

In light of the foregoing, we find that the timing chain tensioner is classified under heading 8409 as a part of an engine and is therefore excluded from classification under heading 8708 by operation of Note 2(e) to Section XVII, *supra*.

HOLDING:

By application of GRIs 1 and 6, the timing chain tensioner is classified in heading 8428, subheading 8409.91.50, HTSUS which provides for “Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Other: Other.” The column one, general rate of duty is 2.5% *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 on the World Wide Web at www.usitc.gov/tata/hts/.

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

GENERAL NOTICE

19 CFR PART 177

**REVOCAION OF A RULING LETTER AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A TENSIONER ARM ASSEMBLY**

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 tensioner arm assembly

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 tensioner arm assembly 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. 56, No. 20, on May 25, 2022. 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 September 11, 2022.

FOR FURTHER INFORMATION CONTACT: Nataline Viray-Fung, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at nataline.viray-fung@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. 50, No. 20, on May 25, 2022, proposing to revoke one ruling letter pertaining to the tariff classification of a tensioner arm assembly. 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 N264869, CBP classified a tensioner arm assembly in heading 8708, HTSUS, specifically in subheading 8708.99.81, HTSUS, which provides for “Parts and accessories of motor vehicles of heading 8701 to 8705: Other parts and accessories: Other: Other: Other: Other: Other.” CBP has reviewed NY N264869 and has determined the ruling letter to be in error. It is now CBP’s position that the tensioner arm assembly is properly classified, in heading 8409, HTSUS, specifically in subheading 8409.91.50, HTSUS, which provides for “Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N264869 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H316285, 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*.

GREGORY CONNOR
for

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H316285

June 28, 2022

CLA-2 OT:RR:CTF:EMAIN H316285 NVF

CATEGORY: Classification

TARIFF NO.: 8409.91.50

YOUNG-BIN OH
HYUNDAI MOTOR COMPANY
231, YANGJAE 2-DONG,
SEOCHO-GU, SEOUL
SOUTH KOREA

RE: Revocation of NY N264869; Tensioner Arm Assembly

DEAR YOUNG-BIN OH:

This ruling is in reference to New York Ruling Letter (“NY”) N264869, dated June 1, 2015, regarding the classification of a tensioner arm assembly under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY N264869, U.S. Customs and Border Protection (“CBP”) classified the tensioner arm assembly in subheading 8708.99.81, HTSUS, which provides for, “Parts and accessories of motor vehicles of heading 8701 to 8705: Other parts and accessories: Other: Other: Other: Other: Other.” Upon reconsideration, CBP has determined that NY N264869 is in error. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 56, No. 20, on May 25, 2022. No comments were received in response to that notice.

FACTS:

In NY N264869 the subject merchandise is described as comprising of a plastic shoe and base which together attach to the timing chain and maintain its constant and regular orbit. One end of the item is fixed to an automobile engine with a bolt, the other end of the item transmits pressure from the timing tensioner to chain and maintains its tension. The shoe is attached to the timing chain directly and prevents the chain from getting off of its track. The mold base is fixed to the engine with bolts and attaches to the timing tensioner. In NY N264869, CBP classified the timing chain assembly in subheading 8708.99.81, HTSUS as a part of a motor vehicle.

ISSUE:

Whether the tensioner arm assembly is classified as a part of an engine under heading 8409, HTSUS, or as a part of a motor vehicle under heading 8708, HTSUS.

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 subheadings under consideration are as follows:

8409 Parts suitable for use solely or principally with the engines of heading 8407 or 8408

8708 Parts and accessories of the motor vehicles of headings 8701 to 8705

Note 2(e) to Section XVII, which includes Chapter 87, states in pertinent part that:

The expressions “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable for the goods of this section: Machines or apparatus of headings 8401 to 8479, or parts thereof, other than the radiators for the articles of this section.

Therefore, before we can classify the tensioner arm assembly under heading 8708, we must first determine whether it is classified under heading 8409 as a part of an engine.

The term “part” is not defined in the HTSUS. In the absence of a statutory definition, the courts have fashioned two distinct but reconcilable tests for determining whether a particular item qualifies as a part for tariff classification purposes. See *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997). Under the first test, articulated in *United States v. Willoughby Camera Stores*, 21 C.C.P.A. 322 (1933), an imported item qualifies as a part only if can be described as an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 779. Pursuant to the second test, set forth in *United States v. Pompeo*, 43 C.C.P.A. 9 (1955), a good is a “part” if it is “dedicated solely for use” with a particular article and, “when applied to that use...meets the Willoughby test.” *Bauerhin*, 110 F.3d at 779 (citing *Pompeo*, 43 C.C.P.A. at 14); *Ludvig Svensson, Inc. v. United States*, 63 F. Supp. 2d 1171, 1178 (Ct. Int’l Trade 1999) (holding that a purported part must satisfy both the *Willoughby* and *Pompeo* tests). An item is not a part if it is “a separate and distinct commercial entity.” *Bauerhin*, 110 F.3d at 779.

For tariff classification purposes, a spark-ignition internal combustion engine of heading 8407 consists only of certain components. See HQ 963386 (June 16, 1999) (accelerator and throttle cables are not part of an engine). The primary components of an engine of heading 8407 generally consist of: a cylinder, piston, connecting-rod, crankshaft, flywheel, inlet and exhaust valves. In order for an engine to function, the piston compresses a mixture of air and fuel in the cylinder and the fuel mixture ignites inside the cylinder. Thus, parts of engines of heading 8407 are limited to the components that directly contribute to the function of internal combustion.

In this case, the tensioner arm assembly is an integral, constituent part of an engine of heading 8407. If the timing chain does not function properly, power cannot be transferred to the camshafts in the precise ratio that is required.* Similarly, without the precise functioning of the timing chain, the engine valves will not open and close properly and the engine will fail. The tensioner arm shoe holds the timing chain in place and in addition to enabling the timing chain to function, also prevents it from coming into direct contact the engine block or the engine head. The base of the tensioner arm assembly connects the shoe to the engine. Without the tensioner arm assem-

* A timing chain performs the same function as a timing belt but is made of metal rather than rubber.

bly, the timing chain cannot function, and the engine cannot properly ignite the fuel mixture inside the cylinder. Therefore, the tensioner arm assembly is a part of an engine of heading 8407.

In light of the foregoing, we find that the tensioner arm assembly is classified under heading 8409 as a part of an engine and is therefore excluded from classification under heading 8708 by operation of Note 2(e) to Section XVII, *supra*.

HOLDING:

By application of GRIs 1 and 6, the tensioner arm assembly is classified in heading 8428, subheading 8409.91.50, HTSUS which provides for “Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Other: Other.” The column one, general rate of duty is 2.5% *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 on the World Wide Web at www.usitc.gov/tata/hts/.

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

U.S. Court of Appeals for the Federal Circuit

NOTE: This disposition is nonprecedential.

PRIME TIME COMMERCE, LLC, Plaintiff-Appellant v. UNITED STATES,
Defendant-Appellee

Appeal No. 2021–1783

Appeal from the United States Court of International Trade in No. 1:18-cv-00024-CRK, Judge Claire R. Kelly.

Decided: June 28, 2022

MARK B. LEHNARDT, Law Offices of David L. Simon, Washington, DC, argued for plaintiff-appellant.

ASHLEY AKERS, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellee. Also represented by BRIAN M. BOYNTON, JEANNE DAVIDSON, PATRICIA M. MCCARTHY; BRENDAN SASLOW, Office of the Chief Counsel for Trade Enforcement & Compliance, United States Department of Commerce, Washington, DC.

Before LOURIE, MAYER, and CUNNINGHAM, *Circuit Judges*.

CUNNINGHAM, *Circuit Judge*.

Prime Time Commerce, LLC (“Prime Time”), a U.S. importer of cased pencils, appeals from the final judgment of the U.S. Court of International Trade (“Trade Court”) sustaining the United States Department of Commerce’s (“Commerce”) application of the China-wide antidumping duty rate to Prime Time, rather than calculating an importer-specific rate. *Prime Time Com. LLC v. United States*, 495 F. Supp. 3d 1308, 1317–18 (Ct. Int’l Trade 2021) (“*Prime Time II*”). The Trade Court also held that Prime Time was barred from making arguments for which it failed to exhaust its administrative remedies by not commenting on Commerce’s remand redetermination. *Id.* at 1316. For the reasons below, we *affirm*.

I. BACKGROUND

A. The Administrative Review

On December 28, 1994, Commerce issued an antidumping duty order on certain cased pencils from China. *Antidumping Duty Order: Certain Cased Pencils from the People’s Republic of China*, 59 Fed.

Reg. 66,909 (Dep't of Commerce Dec. 28, 1994) (“*Cased Pencils Order*”). Commerce notified interested parties of the opportunity to request an administrative review of the order on December 1, 2016. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 Fed. Reg. 86,694 (Dep't of Commerce Dec. 1, 2016). Prime Time filed a timely request for administrative review of the order. J.A. 47–82 (Prime Time Commerce, LLC’s *Request for Administrative Review* (Jan. 3, 2017)). On February 13, 2017, Commerce initiated an administrative review covering the period from December 1, 2015, through November 30, 2016. *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 Fed. Reg. 10,457, 10,459 (Dep't of Commerce Feb. 13, 2017) (“*Initiation Notice*”).

In antidumping investigations of countries with non-market economies (“NMEs”), such as China, Commerce applies a rebuttable presumption that all exporters are subject to government control. *China Mfrs. Alliance, LLC v. United States*, 1 F.4th 1028, 1030–31, 1039 (Fed. Cir. 2021). Commerce uses a single antidumping rate for all companies that fail to demonstrate independence from government control. *Id.* at 1030–31.

Here, Commerce preliminarily assigned a 114.90% antidumping duty rate—the highest rate available—to all China-wide entities. *Certain Cased Pencils from the People’s Republic of China*, 82 Fed. Reg. 43,329, 43,331 (Dep't of Commerce Sept. 15, 2017); *see also Prime Time II*, 495 F. Supp. 3d at 1312. One of these entities was Ningbo Homey Union Co., Ltd. (“Ningbo Homey”), Prime Time’s supplier and exporter. *Id.* at 1311–12. Commerce had calculated the 114.90% rate from facts available with an adverse inference (“adverse facts available” or “AFA”). *Certain Cased Pencils from the People’s Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 Fed. Reg. 48,612, 48,613 (Dep't of Commerce July 25, 2002), Dec. Mem. at cmt. 9 (citing 67 Fed. Reg. 2402, 2406–07 (Dep't of Commerce Jan. 17, 2002)) (“[W]e are relying on adverse facts available to determine the margins for the PRC-wide entity.”).

Commerce invited companies seeking a separate rate to submit a separate rate application (“SRA”) demonstrating their independence from the Chinese government. *Initiation Notice*, at 10,458.

B. Ningbo Homey’s Separate Rate Application and Prime Time’s Submission

Ningbo Homey timely filed an SRA. J.A. 90–203 (*Separate Rate Application of Ningbo Homey Union Co., Ltd.*, PR21/CR7–9 (Mar. 15, 2017)). Commerce selected Ningbo Homey as the sole mandatory

respondent.¹ J.A. 207–09 (Department of Commerce’s *Respondent Selection Memo* (March 30, 2017)). Commerce then sent Ningbo Homey an antidumping questionnaire instructing it to “wholly and fully participate” in the administrative review, J.A. 216, “not selectively choose which requests to respond to,” *id.*, and respond to questions on its separate rate status. J.A. 210–307 (Department of Commerce’s *Questionnaire to Ningbo Homey Union Co., Ltd.* (Apr. 3, 2017)). Ningbo Homey declined to participate further in the review, however, due to its low export volume and value along with the expense and time commitment of participation. Appellant’s Br. 6.

Believing Ningbo Homey’s rate to be significantly lower than the 114.90% China-wide rate, Prime Time sought to obtain an individual rate by providing additional information to Commerce. *Id.* Prime Time submitted information relevant to section C (U.S. sales) and section D (factors of production) of the questionnaire sent to Ningbo Homey. J.A. 313, 334 (Prime Time Commerce, LLC’s *Section C&D Questionnaire Response (Rejection Notice)* (May 10, 2017)). Commerce rejected Prime Time’s submission. J.A. 334–36 (Department of Commerce’s *Rejection Letter to Prime Time Commerce, LLC* (June 9, 2017)). Commerce reasoned that Prime Time’s submissions contained unsolicited new information because Commerce’s questionnaire was directed at Ningbo Homey, not Prime Time, and failed to “include a detailed narrative explaining why it should be considered.” *Id.* at 334–35. Prime Time requested reconsideration, but Commerce did not change its decision. J.A. 351–56 (Prime Time Commerce, LLC’s *Request for Reconsideration* (Aug. 3, 2017)).

C. Commerce’s Decision

In its Preliminary Results, Commerce determined that Ningbo Homey failed to respond to all parts of the questionnaire, denied the separate rate, and assigned Ningbo Homey the China-wide rate of 114.90%. *Certain Cased Pencils from People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2015–2016*, 82 Fed. Reg. 43,329, 43,330–31 (Dep’t of Commerce Sept. 15, 2017) (“Prelim. Dec. Mem.”). Commerce invited interested parties to comment on its preliminary results. *Id.* at 43,331. Prime Time renewed its request for reconsideration, arguing

¹ Generally, Commerce must determine an individual dumping margin for each exporter. 19 U.S.C. § 1677f–1(c)(1). But, where that is “not practicable,” Commerce may limit its examination to a “reasonable number of exporters.” § 1677f–1(c)(2). Commerce refers to those selected for individual investigation as “mandatory respondents.” *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1372 (Fed. Cir. 2013).

that Commerce should not have rejected its submission because Commerce had an obligation to use that information under 19 U.S.C. § 1677m(e). J.A. 383–84, 389, 394–95 (Prime Time Commerce, LLC’s *Case Brief* (Oct. 16, 2017)). Prime Time also argued that Commerce’s use of AFA was not warranted because Commerce should have considered neutral facts available to calculate the rate for Prime Time even if Commerce applied AFA to other Ningbo Homey shipments. J.A. 388. Prime Time lastly argued that the highest, most adverse rate determined was not proportional to Prime Time’s diligence and efforts to cooperate by providing information to Commerce to calculate a rate for Ningbo Homey. J.A. 391–94.

Nonetheless, Commerce made no changes in its final results. *Certain Cased Pencils from People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 83 Fed. Reg. 3,112 (Dep’t of Commerce Jan. 23, 2018) (“*Final Results*”). In its Final Results, Commerce reasoned that Ningbo Homey failed to establish eligibility for a separate rate because it did not provide information supporting reconsideration of its preliminary decision. *Id.* at 3,113. Commerce concluded that Prime Time’s questionnaire response was properly rejected because it was incomplete, unsolicited, and did not come from the mandatory respondent, Ningbo Homey. J.A. 399.

D. Prime Time’s Appeal

Prime Time appealed to the Trade Court. The Trade Court found that Commerce erred in rejecting and removing Prime Time’s submission from the record. *Prime Time Com. LLC v. United States*, 396 F. Supp. 3d 1319, 1326–34 (Ct. Int’l Trade 2019) (“*Prime Time I*”). It further determined that “Commerce’s decision not to consider Prime Time’s efforts to comply with Commerce’s requests for information is in accordance with law.” *Id.* at 1333–34. The Trade Court remanded Commerce’s final results, directing Commerce to accept into the record and consider Prime Time’s submission “in the context of calculating an importer-specific assessment rate for Prime Time’s entries,” or, if Commerce did not calculate an importer-specific rate, explain why not doing so was reasonable. *Id.* at 1323.

On remand, Prime Time resubmitted its information. J.A. 604–1348 (Prime Time Commerce LLC’s *Resubmission of Section C&D Questionnaire Response Information for Ningbo Homey Co., Ltd.* (Aug. 6, 2019)). It explained that it “had difficulty obtaining all the information necessary to calculate a separate margin for Prime Time, and thus [sought] guidance from Commerce for any further request for Ningbo Homey information.” J.A. 611–12. Prime Time suggested that the information in other parties’ confidential prior-

review submissions “be representative of Ningbo Homey to the extent applicable and missing from the submission herein (e.g., labor, energy, and other [factors of production]).” J.A. 612. In its submission, Prime Time included the public versions of other parties’ prior-review submissions, which did not contain any confidential gap-filling information. J.A. 756–1331. Only Commerce had access to the confidential versions. J.A. 402.

In its draft remand redetermination, Commerce again declined to calculate an importer-specific rate on the grounds that Prime Time’s submitted information was “incomplete,” “unreliab[le],” and “unduly difficult” to piece together. J.A. 1358–59, 1364 (*Draft Results of Redetermination Pursuant to Remand Order* (Sept. 17, 2019)). Commerce again invited interested parties to comment on this draft redetermination. J.A. 1364. Prime Time chose not to comment. Accordingly, Commerce issued its final remand redetermination without calculating an importer-specific assessment rate for Prime Time. J.A. 1367–82 (*Final Results of Redetermination Pursuant to Remand Order* (Oct. 7, 2019)).

Once more, Prime Time challenged Commerce’s refusal to calculate an importer-specific assessment rate before the Trade Court. J.A. 1383–96 (Prime Time Commerce LLC’s *Comments on Remand Redetermination* (Nov. 6, 2019)). The Trade Court sustained Commerce’s remand redetermination as supported by substantial evidence. *Prime Time II*, 495 F. Supp. 3d at 1318. The Trade Court held that Prime Time’s arguments that Commerce failed to comply with the remand order and failed to place gap-filling information on the record were barred because Prime Time failed to raise them before Commerce in the first instance. *Id.* at 1313–14. Additionally, the Trade Court held that Commerce’s practice of not calculating an importer-specific assessment rate where an importer’s corresponding exporter failed to fully comply with Commerce’s inquiries was reasonable because the burden was on “interested parties to populate the record; a burden which was not met in this case.” *Id.* at 1317.

On appeal, Prime Time contests both the Trade Court’s initial remand decision and its final decision. We have jurisdiction under 28 U.S.C. § 1295(a)(5).

II. DISCUSSION

Prime Time raises two arguments on appeal. First, it argues that the Trade Court abused its discretion by requiring Prime Time to exhaust its administrative remedies as to its argument that Commerce should have looked to confidential information within Commerce’s control to fill gaps in its evaluation. Appellant’s Br. 25–34.

Prime Time asserts that this confidential information would have allowed Commerce to calculate a separate rate for Ningbo Homey and an importer-specific antidumping rate for Prime Time, rather than using the high China-wide rate. *Id.* at 25–26, 33–34. Second, Prime Time argues that Commerce erred in using the highest available rate as an AFA rate because it did not conduct an “evaluation . . . of the situation that resulted in” the use of AFA as required by 19 U.S.C. § 1677e(d)(2). *Id.* at 34–35, 36–39. Specifically, Prime Time argues that Commerce should have considered information provided by Prime Time in determining what facts to rely on in calculating the applicable rate. *Id.* at 37–39. We address each argument in turn.

A. Exhaustion of Administrative Remedies

Prime Time argues that the Trade Court abused its discretion in requiring exhaustion of administrative remedies because it would have been futile to repeat its argument before Commerce. Appellant’s Br. 20. We disagree.

We review the Trade Court’s decision to require exhaustion of administrative remedies for abuse of discretion. *Boomerang Tube*, 856 F.3d at 912. We reverse the Trade Court’s decision only if the Trade Court “erred in interpreting the law, exercised its judgment on clearly erroneous findings of material fact, or made an irrational judgment in weighing the relevant factors.” *Id.* (citation omitted).

Generally, the Trade Court “shall, where appropriate, require the exhaustion of administrative remedies.” 28 U.S.C. § 2637(d). The Trade Court typically takes a “strict view” of the exhaustion requirement in trade cases. *Corus Staal BV v. United States*, 502 F.3d 1370, 1379 (Fed. Cir. 2007). The exhaustion requirement applies equally in remand proceedings. *Mittal Steel Point Lisas Ltd. v. United States*, 548 F.3d 1375, 1383–84 (Fed. Cir. 2008).

Prime Time does not dispute that it did not submit comments on Commerce’s September 17, 2019, remand redetermination draft. Rather, Prime Time argues that its failure to exhaust its administrative remedies should be excused because raising its argument—that Commerce should look to confidential information in Commerce’s control to provide gap-filling information necessary to calculate an independent rate for Prime Time—again would have been futile. Appellant’s Br. 25–34.

While the futility exception may be applied where “enforcing the exhaustion requirement would mean that parties would be required to go through obviously useless motions in order to preserve their

rights,” the exception is narrow. *Corus Staal*, 502 F.3d at 1379 (internal quotations omitted). “The mere fact that an adverse decision may have been likely does not excuse a party from a statutory or regulatory requirement that it exhaust administrative remedies.” *Id.* Here, while it may have been *unlikely* that Commerce would have accepted Prime Time’s arguments, it is far from *certain* that the government would have rejected them. And even when it is likely that Commerce would have rejected an argument, “it would still have been preferable, for purposes of administrative regularity and judicial efficiency,” for Prime Time to submit comments and “for Commerce to give its full and final administrative response in the final results.” *See id.* at 1380.

This case is not akin to cases in which courts have held that exhausting administrative remedies would have been futile. *Cf. Cooper v. Marsh*, 807 F.2d 988, 990 (Fed. Cir. 1986) (“[A]n exception to the exhaustion doctrine [is] where pursuit of a remedy before a particular forum would be futile[.]”); *Randolph-Sheppard Vendors of Am. v. Weinberger*, 795 F.2d 90, 105 (D.C. Cir. 1986) (explaining futility as involving the “certainty of an adverse decision”). Prime Time relies on *Itochu Building Products v. United States*, 733 F.3d 1140 (Fed. Cir. 2013), which is readily distinguishable. In *Itochu*, Commerce initially declined foreign nail manufacturer Itochu’s request after Itochu “set forth its position in comments, met with eight department officials to discuss the issue, and submitted legal support for its position.” *Id.* at 1146. We explained that futility applies where “it [was] clear that additional filings with the agency would be ineffectual.” *Id.* “Commerce had heard everything on the issue that Itochu had to say.” *Id.* at 1147. Here, Prime Time raised new arguments before the Trade Court that were not previously raised before Commerce. *Compare* J.A. 611–12, *with* J.A. 1392–94. Because of Prime Time’s failure to comment on Commerce’s draft remand redetermination and the new arguments that it first raised before the Trade Court, Commerce was not given an opportunity to modify its final determination in response to arguments raised by the parties as it could have during administrative proceedings. Thus, we conclude that the Trade Court did not abuse its discretion in requiring Prime Time to exhaust its administrative remedies by commenting on Commerce’s draft remand redetermination.

B. Application of the China-Wide Rate

We next turn to Commerce’s decision to apply the China-wide rate to Prime Time. We review decisions by the Trade Court *de novo*—the

same standard under which the Trade Court reviews Commerce's determination—although we recognize that the Trade Court has unique and specialized expertise in this field. *Boomerang Tube LLC v. United States*, 856 F.3d 908, 912 (Fed. Cir. 2017) (citation omitted). We uphold Commerce's calculation of an antidumping rate unless it is unsupported by substantial evidence or otherwise not in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(i). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938).

We determine that Commerce's decision is supported by substantial evidence. Commerce conducted a proper case-specific evaluation by applying the China-wide rate to Ningbo Homey, finding that Ningbo Homey failed to rebut the presumption of government control, and extending the China-wide rate to Prime Time as Ningbo Homey's corresponding importer. Commerce's failure to consider Prime Time's efforts to cooperate as an interested party was harmless error.

First, we must consider whether 19 U.S.C. § 1677e applies. Section 1677e governs when Commerce applies facts available, including AFA, in determining antidumping rates. 19 U.S.C. § 1677e. The parties dispute whether the 114.90% China-wide rate is an AFA rate. Appellant's Br. 37–38; Appellee's Br. 31, 35–36. But regardless of whether the China-wide rate is an AFA rate or not, the statutory framework of 19 U.S.C. § 1677e can apply. "The fact that a country-wide rate may have been calculated using AFA does not change its applicability to [an] NME entity that cooperated, but ultimately failed to qualify for a separate rate." *Diamond Sawblades Mfrs.' Coal. v. United States*, 866 F.3d 1304, 1312 (Fed. Cir. 2017). Although "[t]he statutory framework, including 19 U.S.C. §§ 1673d and 1677e(b) . . . explicitly applies only to market economy proceedings," we have permitted Commerce to "adopt[] that statutory framework in NME proceedings as well." *Id.* Commerce maintains "broad authority to interpret the antidumping statute and devise procedures to carry out the statutory mandate." *Id.* at 1311 (citation omitted); see also *Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345, 1352 n.6 (Fed. Cir. 2016) (holding that although § 1673d "explicitly applies only to market economy proceedings . . . Commerce has adopted it in non-market economy proceedings as well"). Thus, § 1677e applies. We next consider whether Commerce met the statutory requirements of that section.

Commerce conducted a proper evaluation under § 1677e(d)(2) in applying the highest available rate. We find unpersuasive Prime Time's contention that Commerce's application of the highest rate

available to Prime Time's entries was unsupported by substantial evidence because Commerce did not conduct the evaluation required by 19 U.S.C. § 1677e. See Appellant's Br. 34–36. Subsection 1677e(d)(2) grants Commerce discretion to apply the highest available rate “based on the evaluation by [Commerce] of the situation that resulted in [Commerce] using an adverse inference in selecting among the facts otherwise available.” 19 U.S.C. § 1677e(d)(2). Commerce must provide “case-specific evaluation” for its selection of the highest calculated rate. *POSCO v. United States*, 335 F. Supp. 3d 1283, 1285 (Ct. Int'l Trade 2018). “Evaluation of the situation” requires Commerce, “as part of its determination of applying the highest rate, to review the record to determine if there was something inappropriate or otherwise unreasonable about that rate, given the situation leading to the application of an adverse inference.” *Hung Vuong Corp. v. United States*, No. 19–00055, 2021 WL 4772962, at *3, 6 (Ct. Int'l Trade Oct. 12, 2021) (citing *POSCO*, 335 F. Supp. 3d at 1285–86).

Here, Prime Time argues that the rate was unreasonable because Commerce did not properly consider evidence of Prime Time's efforts to cooperate as an interested party under § 1677m(e) and § 1677e(b)(1)(A). Appellant's Br. 23–24, 38–39. Subsection 1677m(e), which applies to administrative review proceedings under 19 U.S.C. § 1675 like the one at issue here, states that Commerce:

shall not decline to consider information that is submitted by an *interested party* and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission, if—

- (1) the information is submitted by the deadline established for its submission,
- (2) the information can be verified,
- (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,
- (4) the *interested party* has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and
- (5) the information can be used without undue difficulties.

19 U.S.C. § 1677m(e) (emphases added); see also 19 U.S.C. § 1677e(b)(1) (“If [Commerce] finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a

request for information from [Commerce], [Commerce], in reaching the applicable determination under this subtitle—(A) may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available . . .”). The term “interested party” expressly includes “a foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise.” 19 U.S.C. § 1677(9)(A); *see also Diamond Sawblades Mfrs.’ Coal. v. United States*, 986 F.3d 1351, 1357 (Fed. Cir. 2021) (“Interested parties, including foreign producers or exporters of subject merchandise, importers of such merchandise, and specified domestic trade associations, are allowed to participate in administrative reviews.”) (citing 19 U.S.C. § 1677(9)(A)). United States importers, thus, are unambiguously considered to be interested parties. *See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984) (holding that effect must be given to the “unambiguously expressed intent of Congress” if “Congress has directly spoken to the precise question at issue”). As Prime Time argues, if Commerce finds that an interested party has failed to cooperate, Commerce has the discretion to use an adverse inference. Appellant’s Br. 17.

Indeed, Commerce and the Trade Court misconstrued “interested party” by failing to consider the definition of “interested party.” In its decision, the Trade Court explains:

Prime Time, as the importer, is not the party whose actions are considered by Commerce when engaging in the adverse inferences analysis under 19 U.S.C. § 1677e(b). The “interested party” the statute refers to is the party to whom Commerce directed its requests for information and to whom the adversely chosen rate would apply. Accordingly, Commerce’s decision not to consider Prime Time’s efforts to comply with Commerce’s requests for information is in accordance with law.

Prime Time I, 396 F. Supp. 3d at 1333–34. This analysis was incorrect; Prime Time is “the United States importer, of subject merchandise.” Because the Trade Court declined to consider Prime Time’s efforts to cooperate as an importer, the Trade Court thus erred.

However, the failure to consider Prime Time’s efforts to cooperate was a harmless error. Prime Time’s purported evidence of cooperation would not disturb the calculation of the 114.90% China-wide rate nor entitle it to a separate rate. Even “where a respondent in an NME country cooperates with an investigation or review but fails to rebut the presumption of government control, Commerce may permissibly

apply the country-wide NME entity rate.” *China Mfrs. Alliance, LLC v. United States*, 1 F.4th 1028, 1040 (Fed. Cir. 2021). Under the framework of the presumption and requirement to rebut government control, the China-wide rate of 114.90% would nonetheless be applied to Prime Time’s entries. We thus affirm. *See Suntec Indus. Co., Ltd. v. United States*, 857 F.3d 1363, 1372 (Fed. Cir. 2017) (finding Commerce’s error to be harmless and affirming the Trade Court); *Intercargo Ins. Co. v. United States*, 83 F.3d 391, 394 (Fed. Cir. 1996) (“It is well settled that principles of harmless error apply to the review of agency proceedings.”).

III. CONCLUSION

We have reviewed Prime Time’s other arguments and find them unpersuasive. Because Prime Time failed to exhaust its administrative remedies and because Commerce properly applied the China-wide rate to Ningbo Homey and Prime Time, we *affirm*.

AFFIRMED

U.S. Court of International Trade

Slip Op. 22–75

ALL ONE GOD FAITH, INC., et al., Plaintiffs, v. UNITED STATES,
Defendant, and CP KELCO U.S., INC., Defendant-Intervenor.

Before: Gary S. Katzmman, Judge
Consol. Court No. 20–00164

[The court denies Plaintiff All One God Faith, Inc.’s motion to file a first amended complaint or, in the alternative, to supplement its complaint.]

Dated: June 24, 2022

Laura A. Moya and *Robert Snyder*, Law Offices of Robert W. Snyder, of Irvine, CA, for Plaintiff All One God Faith, Inc., d/b/a Dr. Bronner’s Magic Soaps.

Kyl J. Kirby, *Kyl J. Kirby*, Attorney and Counselor at Law, P.C., of Fort Worth, TX, for Consolidated Plaintiffs Ascension Chemicals LLC, UMD Solutions LLC, GLöB Energy Corporation, and Crude Chem Technology LLC.

Kelly A. Krystyniak, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, N.Y., for Defendant United States. With her on the brief were *Brian M. Boynton*, Acting Assistant Attorney General, *Patricia M. McCarthy*, Director, and *L. Misha Preheim*, Assistant Director. Of counsel on the brief was *Tamari J. Lagvilava*, Office of Assistant Chief Counsel, U.S. Customs and Border Protection, of New York, N.Y.

Matthew J. Clark, ArentFox Schiff LLP, of Washington, D.C., for Defendant-Intervenor CP Kelco U.S., Inc.

OPINION

Katzmann, Judge:

Before the court is Plaintiff All One God Faith, Inc.’s motion for leave to file an amended complaint. Plaintiff, challenging the determination of evasion issued against it by U.S. Customs and Border Protection (“CBP”) under the Enforce and Protect Act (“EAPA”), now seeks to amend its complaint to explicitly contest CBP’s denial of its protests with respect to the xanthan gum entries subject to the EAPA determination. As Plaintiff’s motion is both untimely and futile, the motion is denied.

BACKGROUND

Plaintiff All One God Faith, Inc. (known more commonly as Dr. Bronner’s Magic Soaps, or “Dr. Bronner’s”), is a personal-care product manufacturer and importer of xanthan gum. Compl. 3, Aug. 25, 2020, ECF No. 2. It filed its summons and complaint in this court on August 26, 2020, in response to a finding by CBP that Dr. Bronner’s had evaded mandated duties on its imports of xanthan gum from China.

Id. at 8–9; Summons, ECF No. 1. This determination, ultimately appealed to and affirmed by CBP’s Office of Trade, Regulations & Rulings (“ORR”), was made on the basis that Dr. Bronner’s had transshipped Chinese xanthan gum through India and thus avoided the applicable Chinese antidumping duty rate. Def.’s Resp. to Pls.’ Mots. for J. on the Agency R. 4, Aug. 2, 2021 ECF No. 40 (“Def.’s 56.2 Br.”). The summons is not on the court-prescribed form to assert jurisdiction pursuant to 28 U.S.C. § 1581(a), makes no reference to the denied protests, and does not list the specific entries that Dr. Bronner’s contests. Summons. Similarly, its complaint makes no reference to CBP’s denial of the protests, and asserts that this Court possesses subject matter jurisdiction over its allegations pursuant to 28 U.S.C. § 1581(c). Compl. at 2.

In its complaint, Dr. Bronner’s challenged CBP’s determination of evasion with respect to all of its entries of xanthan gum between April 16, 2018, and the conclusion of CBP’s investigation on March 9, 2020 (the “Subject Entries”). Dr. Bronner’s alleged specifically that (1) the Subject Entries were not in fact subject to the relevant antidumping duty order, as their manufacturer was excluded from its scope; (2) CBP failed to adequately substantiate its finding that Dr. Bronner’s evasion resulted in CBP’s loss of antidumping duty cash deposits; (3) CBP abused its discretion by disregarding Dr. Bronner’s submitted evidence; (4) CBP abused its discretion by unlawfully applying adverse inferences to Dr. Bronner’s; (5) CBP abused its discretion by prematurely liquidating the Subject Entries at the China-wide rate; (6) CBP abused its discretion by wrongfully applying a substantial evidence standard of review; and (7) CBP failed to comply with EA-PA’s procedural requirements. These allegations were presented for the court’s review in Dr. Bronner’s Motion for Judgment on the Agency Record, filed on February 16, 2021. Pls.’ Mot. for J. on the Agency R., ECF No. 26. Notably, Defendant the United States (the Government”) opposed Dr. Bronner’s motion and simultaneously moved to dismiss Dr. Bronner’s complaint on the basis that Dr. Bronner’s protested CBP’s liquidation of its entries but had “failed to timely appeal the denial of those protests” to the court. Def.’s 56.2 Br. at 1. Oral argument on both motions was held on February 15, 2022. Oral Argument, ECF No. 63.

Shortly after oral argument, Dr. Bronner’s filed the motion now before the court, requesting permission to amend the complaint in order to include a challenge to CBP’s denial of Dr. Bronner’s protest of the liquidation of the Subject Entries. Pl.’s Mot. for Leave to File a First Am. Compl., Feb. 25, 2022, ECF No. 67 (“Pl.’s Br.”). Dr. Bronner’s contends that the amendments proposed “seek to explicitly

assert this Court's subject matter jurisdiction over this action under 28 U.S.C. § 1516(a)—the statute providing this Court with jurisdiction over denials of protests only—in addition to the original authority alleged by [Dr. Bronner's], 28 U.S.C. § 1581(c)—which provides this Court with jurisdiction over any CBP EAPA determinations.” *Id.* at 3. The Government opposes Dr. Bronner's motion, arguing that (1) Dr. Bronner's seeks only to amend its complaint, and not its summons, thus failing to cure any extant jurisdictional defect, and (2) even if Dr. Bronner's sought to amend its summons, its motion is untimely. Def.'s Opp. to Pl.'s Mot. for Leave to File an Am. Compl., Mar. 13, 2022, ECF No. 68 (Def.'s Br.).

JURISDICTION

This court, “like all federal courts, is a court of limited jurisdiction.” *Indus. Chems. Inc. v. United States*, 941 F.3d 1368, 1371 (Fed. Cir. 2019) (quoting *Sakar Int'l., Inc. v. United States*, 516 F.3d 1340, 1349 (Fed. Cir. 2008)). That jurisdiction includes “exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under [19 U.S.C. § 1515].” 28 U.S.C. § 1581(a). Where such jurisdiction is challenged, the “party invoking the [Court of International Trade's] jurisdiction has the burden of establishing that jurisdiction.” *Wangxiang Am. Corp. v. United States*, 12 F.4th 1369, 1373 (Fed. Cir. 2021) (quoting *Norsk Hydro Can., Inc. v. United States*, 472 F.3d 1347, 1355 (Fed. Cir. 2006)).

In order to assert jurisdiction over entries subject to a protest denied by CBP, the initial pleading (i.e. the summons) must specifically identify the protest that was the subject of the notice of denial under 19 U.S.C. § 1515. *DaimlerChrysler Corp. v. United States*, 442 F.3d 1313 (Fed. Cir. 2006). A summons may not be amended to cure such a defect after the jurisdictional 180-day requirement for contesting the denial of a protest has lapsed. *Id.*; see 28 U.S.C. § 1581(a) (providing “exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under [19 U.S.C. § 1515]”) and 28 U.S.C. § 2636(a)(1) (“A civil action contesting the denial, in whole or in part, of a protest under [19 U.S.C. § 1515] is barred unless commenced in accordance with the rules of the Court of International Trade . . . within one hundred and eighty days after the date of mailing of notice of denial of a protest under [19 U.S.C. § 1515(a)].”).

With respect to the amendment of complaints, U.S. Court of International Trade Rule 15(a)(2) provides that the court “should freely give leave [to amend a pleading] when justice so requires.” However, leave to amend may be denied on the basis of “undue delay, bad faith

or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment” and so forth. *Intrepid v. Pollock*, 907 F.2d 1125, 1128 (Fed. Cir. 1990) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

DISCUSSION

Dr. Bronner’s argues that its proposed amendments are “mere technicalities.” Pl.’s Br. at 3. While it admits its motion “could have been filed at an earlier stage,” it contends that its delay was “inadvertent” and that it has now filed to clarify its assertion of subject matter jurisdiction following an “instructive” oral argument highlighting the Government’s jurisdictional challenges. Pl.’s Br. at 4–5.

In fact, Dr. Bronner’s was alerted to its potential jurisdictional deficiencies well before it filed any motion to repair them. The Government’s partial motion to dismiss was filed on August 2, 2021, more than six months before Dr. Bronner’s motion to amend, and explicitly requested that “Dr. Bronner’s complaint . . . be dismissed because it protested CBP’s liquidation of its entries before CBP, but failed to timely appeal the denial of those protests to this court.” Def.’s 56.2 Br. at 3. Furthermore, on September 30, 2021, the court issued an order in this litigation clarifying that it “does not possess subject matter jurisdiction to review entries that have already been liquidated except upon commencement of an action challenging denial of protest.” Order Denying Mot. for Temp. Restraining Order 1, ECF No. 54. Despite these clear indications that its complaint failed to adequately allege the court’s jurisdiction over its liquidated entries, Dr. Bronner’s nevertheless made no attempt to repair that deficiency until February of 2022. It is thus difficult to credit Dr. Bronner’s current argument that it has “been diligently pursuing this matter and has never displayed any dilatory intent.” Pl.’s Br. at 5. This undue delay, taken alone, is sufficient basis for the court to deny Dr. Bronner’s motion. See *Intrepid*, 907 F.2d at 128.

Furthermore, even if Dr. Bronner’s had not been dilatory in addressing its complaint’s deficiency, the Federal Circuit has clearly held that a summons which fails to identify specific protests is “insufficient to ‘commence an action’ in the Court of International Trade.” *DaimlerChrysler*, 442 F.3d at 1322. Indeed, the “essential jurisdictional fact—the denial of the protest—simply cannot be affirmatively alleged without specifically identifying each protest involved.” *Id.* at 1319. Here, as a threshold matter, Dr. Bronner’s has made no effort to amend its summons. If granted, its motion would therefore fail to establish the court’s subject matter jurisdiction over

the liquidated entries because the summons, and not the complaint, is the initial pleading that must both “establish[] . . . jurisdiction” and “put[] the adverse party on notice of the commencement and subject matter of the suit.” *Id.* at 1317. More importantly, Dr. Bronner’s has not identified the specific protests at issue, and instead requests only that the court set aside CBP’s “denials of [Dr. Bronner’s] protests covering the erroneous liquidations of its Subject Entries.” Pl.’s Br. Exh. 1 at 15.¹ Thus, even if the amended complaint could somehow provide sufficient basis for either notice or jurisdiction, it would still fail to “identify with particularity” the contested protests. *Daimler-Chrysler*, 442 F.3d at 1321. As the proposed amendments are accordingly insufficient both to commence an action regarding CBP’s denial of protests and to establish the jurisdiction of the court under 28 U.S.C. § 1581(c), the motion cannot cure any associated jurisdictional defects and is futile.

CONCLUSION

For the foregoing reasons, Plaintiff’s motion to amend or supplement its complaint is denied.

SO ORDERED.

Dated: June 24, 2022

New York, New York

/s/ Gary S. Katzmann

JUDGE

¹ Although Dr. Bronner’s still has not identified with specificity the protests that it wishes to invoke the court’s jurisdiction under 28 U.S.C. § 1581(a) to contest, CBP has identified two protests filed by Dr. Bronner’s challenging CBP’s assessment of antidumping duties upon the liquidation of its entries, and CBP denied these protests on April 9 and 21, 2020. Def.’s 56.2 Br. Exh. A, French Decl. at ¶¶ 7–8. While Dr. Bronner’s commenced this action within 180 days of the date of mailing of the notices of CBP’s denial of these protests, neither the summons nor complaint indicate that Dr. Bronner’s seeks to appeal the denial of these protests and both documents invoke this court’s jurisdiction under § 1581(c), not (a). *See* Summons; Compl. at 2. Indeed, even outside its invocation of the improper jurisdictional provision, Dr. Bronner’s summons and complaint cannot be construed as pleading an appeal of a protest denial; in fact, neither even mentions the protests. *See, generally, id.* Dr. Bronner’s has thus failed to timely appeal CBP’s denial of its protests, and the 180-day deadline to do so has lapsed. Pl.’s Br. at 5 (conceding that the 180-day windows to appeal denied protests closed on October 6, 2020, and October 18, 2020).

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