

U.S. Customs and Border Protection

19 CFR PART 12

CBP DEC. 22-04

EMERGENCY IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIAL OF AFGHANISTAN

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of emergency import restrictions on certain archaeological and ethnological material from Afghanistan. The Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State, determined that conditions warrant the imposition of emergency restrictions on categories of archaeological material and ethnological material of the cultural heritage of Afghanistan. This document contains the Designated List of Archaeological and Ethnological Material of Afghanistan that describes the types of objects or categories of archaeological and ethnological material to which the import restrictions apply. The emergency import restrictions imposed on certain archaeological and ethnological material of Afghanistan will be in effect until April 28, 2026, unless extended. These restrictions are being imposed pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act.

DATES: Effective on February 18, 2022.

FOR FURTHER INFORMATION CONTACT: For legal aspects, W. Richmond Beevers, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325-0084, *ot-otrrculturalproperty@cbp.dhs.gov*. For operational aspects, Julie L. Stoeber, Chief, 1USG Branch, Trade Policy and Programs, Office of Trade, (202) 945-7064, *1USGBranch@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:**Background**

The Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.* (hereinafter, “the Cultural Property Implementation Act” or “Act”), implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter, “the Convention” (823 U.N.T.S. 231 (1972))). Pursuant to the Cultural Property Implementation Act, the United States may enter into international agreements with another State Party to the Convention to impose import restrictions on eligible archaeological and ethnological material under procedures and requirements prescribed by the Act. Under certain limited circumstances, the Cultural Property Implementation Act authorizes the imposition of import restrictions on an emergency basis (19 U.S.C. 2603).

Pursuant to 19 U.S.C. 2602(a), on April 28, 2021, Afghanistan, a State Party to the Convention, requested that import restrictions be imposed on certain archaeological and ethnological material, the pilage of which jeopardizes the cultural heritage of Afghanistan. The Cultural Property Implementation Act authorizes the President (or designee) to apply import restrictions on an emergency basis if the President determines that an emergency condition applies with respect to any archaeological or ethnological material of any requesting State Party (19 U.S.C. 2603). The emergency restrictions are effective for no more than five years from the date of the State Party’s request and may be extended for three years where it is determined that the emergency condition continues to apply with respect to the covered material (19 U.S.C. 2603(c)(3)). These restrictions may also be continued pursuant to an agreement concluded within the meaning of the Act (19 U.S.C. 2603(c)(4)).

On November 16, 2021, the Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations necessary under the Act for the emergency imposition of import restrictions on certain archaeological material and ethnological material of the cultural heritage of Afghanistan. The Designated List below sets forth the categories of material to which the import restrictions apply. Thus, U.S.

Customs and Border Protection (CBP) is amending § 12.104g(b) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(b)) accordingly.

Importation of covered material from Afghanistan will be restricted until April 28, 2026, unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Designated List of Archaeological and Ethnological Material of Afghanistan

The Designated List includes archaeological and ethnological material sourced from Afghanistan. Archaeological material ranges in date from the Paleolithic (50,000 B.C.) through the beginning of the Durrani Dynasty (A.D. 1747). Ethnological material includes architectural objects and wooden objects associated with Afghanistan's diverse history, from the 9th century A.D. through A.D. 1920. The Designated List set forth is representative only. Any dates and dimensions are approximate. The list is inclusive of yet-to-be-discovered styles and types.

Categories of Archaeological and Ethnological Material

I. Archaeological Material

- A. Stone
- B. Ceramics, Faience, and Fired Clay
- C. Metal
- D. Plaster, Stucco, and Unfired Clay
- E. Painting
- F. Ivory and Bone
- G. Glass
- H. Leather, Birch Bark, Vellum, Parchment, and Paper
- I. Textiles
- J. Wood, Shell, and other Organic Material
- K. Human Remains

II. Ethnological Material

- A. Stone, Brick, Plaster, and Stucco
- B. Tiles
- C. Stained Glass
- D. Wood

Approximate simplified chronology of well-known periods:

- (a) Paleolithic to Chalcolithic (c. 50,000–3000 B.C.)
- (b) Bronze Age (3000–1000 B.C.)
- (c) Achaemenid Period (c. 6th century–330 B.C.)
- (d) Mauryan Empire (c. 304–232 B.C.)

- (e) Hellenistic Empire and Greco-Bactrian Kingdom (330 B.C.–c. A.D. 10)
- (f) Kushan Empire (c. 2nd century B.C.–3rd century A.D.)
- (g) Persian Sassanid Empire and Hephthalite Conquest (A.D. 224–651)
- (h) Gandharan Period (c. 300 B.C.–A.D. 1200)
- (i) Ghaznavid Empire (A.D. 962–1186)
- (j) Ghurid Empire (A.D. 1148–1202)
- (k) Timurid and Mughal Empire (A.D. 1370–A.D. early 18th century)
- (l) Durrani Dynasty (A.D. 1747¹–1826)
- (m) Dost Mohammed and Anglo-Afghan Wars (A.D. 1826–1880)
- (n) Modern Afghanistan (A.D. 1880–Present)²

I. Archaeological Material

A. Stone

1. Architectural Elements—Primarily in alabaster, limestone, marble, steatite schist and other types of stone. Category includes, but is not limited to, bricks and blocks from walls, ceilings, and floors; columns; door frames; false gables; friezes; lintels; mihrabs; minarets; niches; pillars; plinths; qiblas; and so on. These architectural elements may be plain, molded, carved, or inscribed in various languages and scripts. Decorative elements on architectural elements may be in high or low relief. Architectural elements may include relief and inlay sculptures that were part of a building (*e.g.*, mausoleums, mosques, minarets, palaces, religious structures, public buildings, stupas, and others) such as friezes, panels, or stone figures. Architectural elements may have religious imagery or have been part of religious structures. For example, Gandharan and Kushan Period styles may include images of the Buddha, scenes from the life of the Buddha, Bodhisattvas, and other human figures, as well as animals, columns, and floral, geometric, and/or vegetal motifs. Other examples may include architectural elements with images of Hindu deities and figures, or Zoroastrian images. Architectural elements carved in stone from Islamic periods may include inscriptions in multiple lan-

¹ Note: Import restrictions concerning archaeological material apply only to those objects dating to A.D. 1747 and earlier.

² Note: Import restrictions concerning ethnological material apply only to those objects that are 100 years old or older.

guages and scripts. Stone architectural elements were common across many periods in Afghanistan's history. Approximate date: 330 B.C.–A.D. 1747.

2. Non-Architectural Relief Sculpture—Primarily in alabaster, limestone, marble, steatite schist, and other types of stone. Types include, but are not limited to, carved bases, ceiling decoration, funerary headstones and monuments, fountains, monoliths niches, plaques, roundels, slabs, sundials, and stelae bases. Decorative elements may be in high- or low-relief and may include animal and/or human forms as well as floral, geometric, and/ or vegetal motifs. Includes edicts and rock pillars with inscriptions in low relief. Inscriptions may be in multiple languages and scripts. Approximate date: 330 B.C.–A.D. 1747.

3. Large Statuary—Primarily in grey schist, gypsum, and marble. Statuary includes human figures, which are often seated or standing. Heads and other figurative elements may be used in high-or low-relief statues. Large statuary of human figures is primarily associated with the Hellenistic Empire and Greco-Bactrian Kingdom through the Gandharan Periods. Also includes statuary of Hindu deities, figures, and images, often dated from the 7th century A.D. onward. Approximate date: 330 B.C.–A.D. 1200.

4. Small Statuary—Primarily in alabaster, calcite, chlorite, dolomite, jasper, limestone, marble, and steatite; primarily free standing; may have been shaped by carving, incision, grinding, polishing, or other techniques. Animal and human forms tend to be stylized. Includes game pieces. Small statuary is found throughout many archaeological periods from the Bronze Age onward, but representative styles are from the Bactrian and Sassanian periods. Approximate date: 2100 B.C.–A.D. 1200.

a. Bactrian figurative statuary is often made of more than one type of stone, often chlorite or steatite, with limestone. Bactrian statues are in anthropomorphic forms, primarily female, and are elaborately carved and/or incised. Forms tend to be abstract and stylized, with armless bodies and legs, and a small protruding head. Heads tend to be small and carved in white limestone. Often in a seated or squatting position. Zoomorphic forms are also included and are often in a squatting or coiled position. Sizes vary, but are typically 14 cm tall. Approximate date: 3rd–2nd millennium B.C.

b. Non-figurative Bactrian statuary includes types such as columns, pillars, or column idols, and discs or disc idols. Column and disc statues have a smooth finish. Columns may have an elongated and/or tapered form with a wider base than at top. Column sizes vary, but typically range from 28–40 cm high and 10–20 cm wide. Discs may

have an incision or groove through the center. Disc sizes vary, but typically range from 20–30 cm wide. Approximate date: 3rd–2nd millennium B.C.

c. Sassanian statuary includes animal and human figures shaped by carving, grinding, and/or polishing. Figures tend to be stylized. May have been used for a variety of purposes including, small statuary possibly used as gaming pieces. Approximate date: A.D. 200–700.

5. Vessels and Containers—Primarily in alabaster, chlorite, porphyry, rock crystal, and steatite schist. Vessel types may be conventional shapes such as amphora, bowls, cups, cylindrical vessels, flacons, jars, jugs, lamps, platters, pyxides, flasks, and trays, and may also include cosmetic containers, reliquaries (and their contents), and incense burners. Some drinking vessels (rhytons) may be in the shape of an animal or mythical creature carved into the ventral end. Surfaces may have incised geometric or vegetal decoration, incised script in multiple languages, and/or be polished. Some stone vessels and containers have no surface decoration. Includes vessel lids.

6. Tools, Instruments, and Weights—Includes groundstone and flaked stone tools.

a. Groundstone tools, instruments, and weights are mainly made from diorite, granite, marble, limestone, or quartz, but other types of stone are included. Types of groundstone tools include balls, batons, maces, palates, pestles, scrapers, scepters, and others. Includes spindle whorls and weights. Ends of batons and scepters may be carved or shaped and are approximately 50 cm to 2 m in length. Stone weights can be shaped or ground into various forms including balls, cubes, handbags, pyramids, rings, or teardrop shapes; may be polished; and may be decorated with incisions or inscriptions in multiple languages. Stone weights typically vary from 20 to 30 cm. Stone tools used to polish, shape, or sharpen other tools are included.

b. Flaked stone tools are primarily made of chert or other cryptocrystalline silicates, flint, limestone, obsidian, quartzite, schist, and others. Flaked stone tool types include axes, bifaces, blades, choppers, cores, hammers, microliths, projectiles, scrapers, sickles, unifaces, and others. Also includes tools like hammerstones and anvils used to create flaked stone tools.

7. Beads and Jewelry—Primarily in agate, amber, carnelian, cryptocrystalline silicates, garnet, lapis lazuli, onyx, turquoise, quartz, or other semi-precious materials. Beads may be carved, cut, drilled, ground, and/or polished. Beads include animal, conical, cylindrical, disc, faceted, tear drop, spherical, and other shapes. May be inscriptions in multiple types of languages and scripts. Jewelry includes amulet, amulet cases, bracelets, necklaces, rings, and other types.

8. Stamps and Seals—Primarily in agate, amethyst, chalcedony, hematite, jasper, rock crystal, steatite, or other types of stone. Stamps and seals may have engravings that include animals, human figures, geometric designs, inscriptions in various languages and scripts, and/or floral/vegetal motifs. Approximate date: 4th century B.C.—A.D. 1500.

9. Furniture—Primarily in agate, steatite, turquoise, or other semi-precious stones. Includes furniture and furniture hardware such as inlay, fragments of inlay, fasteners, handles, knobs, and roundels.

B. *Ceramics, Faience, and Fired Clay*

1. Statuary—Includes small and large-scale ceramic and terracotta statuary. May be in animal, human, hybrid animal/human, and mythological forms. Imagery may be religious. Objects may be associated with religious activity, games, or toys. May have traces of paint or pigment. Forms may be stylized or naturalized statuary depending on the time period. Stylized forms are associated with the Neolithic and Sassanian periods, while naturalized forms are associated with the Greco-Bactrian and Gandharan period onward. Approximate date: 9000 B.C.—A.D. 1747.

2. Architectural Elements—Includes terracotta antefixes, niches, panels, tiles, and other elements used as functional or decorative elements in buildings and mosaics. Terracotta panels may be painted or have traces of paint. Terracotta tiles may be painted or unpainted. Mosaic designs often include animals, humans, floral, geometric, and/or vegetal motifs. Tiles may be carved or have impressed or molded images of animals, humans, floral, geometric, and/or vegetal motifs for decorative relief. Imagery may be religious. Includes bricks, pipes, and other architectural elements from archaeological contexts. Approximate date: 330 B.C.—A.D. 1747.

3. Vessels—Includes utilitarian types, fine tableware, incense burners, cosmetic containers, funerary urns, lamps, and other ceramic objects of everyday use.

a. Neolithic—Includes earthenware vessels. Vessel types include bowls, cups, goblets, jars, vases, and other forms. Often painted with animal design; floral, geometric, and/or vegetal motifs (*e.g.*, pipal leaves). Approximate date: 9000–2400 B.C.

b. Bronze Age through pre-Islamic Periods—Includes earthenware vessels that may have a pink, peach, orange, or grey core. Vessel types include conventional shapes such as basins, beakers, bottles, bowls, jars, pitchers, storage vessels, vases, as well other forms such as cosmetic jars, lamps, stands, and table amphorae. Vessel forms may have pedestalled bases and/or handles. Surface treatments may include slip, painting, and/or burnishing/polishing. Decorative tech-

niques include incised and impressed decorations, including grooving, roulette, stamping, and other techniques. Stamps used for decoration range from simple geometric patterns to rosettes to elaborate scenes combining animal, floral, geometric, and/or vegetal designs. Some vessels may have elaborate shapes created using molds. High-relief surface decorative techniques may include affixing molded animal heads or rosettes to the exterior surface of a vessel. Examples include Greco-Bactrian vessels that range from plain to having multiple types of surface treatment and decorative techniques. Begram vessels may have intricate human/animal hybrid shapes molded into the vessel exterior. Some Sassanian vessel forms may have uniformly glazed ceramics in green, blue-green, or yellow glazes, while utilitarian forms may be unglazed. Includes lids of ceramic vessels. Approximate date: 3000 B.C.–A.D. 1000.

c. Islamic Periods—Includes earthenware vessels (often red and buff) and porcelain. Vessel types may form conventional shapes such as bowls, cups, ewers, flasks, jars, jugs, platters, trays, and other types such as fire blowers (aeolipipes), incense burners, footed vessels, and zoomorphic shapes. May be hand-built, molded, or wheel thrown. Surface treatments may include slip, polishing, burnishing, and others. Vessels may have slip and paint. Other decorative techniques include incisions (sgraffito), often in floral, geometric, and/or vegetal designs; and inscriptions in multiple languages and scripts. Animal and human forms may be stylized. Vessels may have colorless lead, monochrome, or polychrome glazing. Vessels may be colorful. Common colors include green, yellow, blue, tomato red, purplish black, turquoise, and white. Imported types include celadons and blue-and-white porcelain from China; fritware, earthenware, and copies of Chinese ceramics from Iran; and glazed ceramics from Uzbekistan. Includes lids of ceramic vessels. Approximate date: A.D. 1000–1747.

4. Islamic Period Tiles—Includes glazed tiles and bricks used to decorate civic and religious architecture. Tiles are mostly square, but some are polygonal. Types may be molded and glazed in monochrome or polychrome. Turquoise and manganese are commonly used for glazing. Some tiles can be molded with decoration, with low- and high-relief techniques. Decorative molding may be in floral, geometric, or vegetal motifs; may have animal imagery. May have inscriptions in multiple languages and scripts. Includes glazed bricks. Approximate date: A.D. 1000–1747

C. *Metal*—Includes copper, gold, silver, iron, electrum, and alloys of copper, tin, lead, and zinc. Metal objects may have been created using

different techniques such as casting, chasing, gilding or repoussé. Approximate date: 3000 B.C.—A.D. 1750.

1. Containers and Vessels—Vessel types may form conventional shapes such as basins, bowls, cauldrons, cups, dishes, ewers, flacons, jars, jugs, lamps, platters, stands, table ornaments, and utensils, and also may be cosmetic containers, incense burners, medicine droppers, reliquaries (and their contents), spouted vessels, and tripod stands. Some drinking vessels (rhytons) may be in the shape of an animal or mythical creature carved into the ventral end. Some styles may have lids and/or handles. Metal containers may be cast and turned, chased, engraved, gilt, and/or punched. Decorative styles include, but are not limited to, animals, arabesque motifs, inscriptions in different languages, floral motifs, geometric motifs, vegetal motifs. Some types of containers and vessels, like reliquaries, may be inlaid with garnet, lapis lazuli, pearl, turquoise, and/or other types of semi-precious stone as well as other types of precious metals, including gold and silver. Includes lids and handles of vessels.

2. Jewelry and Personal Adornment—Types include, but are not limited to, amulets, amulet holders, bracelets, bracteates, belts, brooches, buckles, buttons, charms, crowns, hair ornaments, hair-pins, mirrors, mirror handles, necklaces, ornaments, pectoral ornaments, pendants, rings, rosettes, scale weights, staffs, and others. May be highly decorative and include inlays of other types of ivory, bone, animal teeth, metals, precious stones, or semi-precious stones. Includes metal ornaments once attached to other types of textiles or leather objects.

3. Tools and Instruments—Types include, but are not limited to, axes, bells, blades, hooks, keys, knives, pins, projectiles, rakes, sickles, spoons, staffs, trowels, weights, and tools of craftpersons such as carpenters, masons, and metal smiths. Approximate date: 3000 B.C.—A.D. 1747.

4. Weapons and Armor—Includes body armor, such as helmets, shin guards, shields, horse armor and horse bits. Launching weapons (spears and javelins); hand-to-hand combat weapons (swords, daggers); and sheaths. Some weapons may be highly decorative and include inlays of other types of metals, precious stones, or semi-precious stones in the sheaths and hilts. Approximate date: 330 B.C.—A.D. 1747.

5. Coins—Ancient coins include gold, silver, copper, and bronze coins; may be hand stamped with units ranging from tetradrachms to dinars; includes gold bun ingots and silver ingots, which may be plain and/or inscribed. Some of the most well-known types are described below:

a. The earliest coins in Afghanistan are Greek silver coins, including tetradrachms and drachmae. Approximate date: 530–333 B.C.

b. During the reign of Darius I, gold staters and silver sigloi were produced in Bactria and Gandhara. Approximate date: 586–550 B.C.

c. Achaemenid coins include round punch-marked coins with one or two punched holes and bent bar coins (*shatamana*). Approximate date: 5th century B.C.

d. Gandhara coins include *janapadas*, bent bar coins based on the silver sigloi weight. Approximate date: 4th century B.C.

e. Mauryan coins include silver *karshapanas* with five punches, six arm designs, and/or sun symbols. Weights ranged from 5.5 to 7.2 gm. Approximate date: 322–185 B.C.

f. Gold staters and silver tetradrachms were produced locally after Alexander the Great conquered the region. Approximate date: 327–323 B.C.

g. Greco-Bactrian coins include gold staters, silver tetradrachms, silver and bronze drachms, and a small number of punch-marked coins. The bust of the king with his name written in Greek and Prakrit were on the obverse, and Greek deities and images of Buddha were on the reverse. Approximate date: 250–125 B.C.

h. Common Roman Imperial coins found in archaeological contexts in Afghanistan were struck in silver and bronze. Approximate date: 1st century B.C.–4th century A.D.

i. Kushan Dynasty coins include silver tetradrachms, copper coin (Augustus type), bronze diadrachms and gold dinars. Imagery includes portrait busts of each king with his emblem (*tamgha*) on both sides. Classical Greek and Zoroastrian deities and images of the Buddha are depicted on the reverse. Approximate date: A.D. 19–230.

j. Sassanian coins include silver drachms, silver half drachms, obols (*dang*), copper drachms and gold dinars, and gold coins of Shapur II (A.D. 309–379). Starting with Peroz I, mint indication was included on the coins. Sassanian coins may include imagery of Zoroastrian Fire Temples. Approximate date: A.D. 224–651.

k. Hephthalite coins include silver drachms, silver dinars, and small copper and bronze coins. The designs were the same as Sassanian, but they did not put the rulers' names on the coins. Hephthalite coins may include imagery of Zoroastrian Fire Temples. Approximate date: 5th–8th centuries A.D.

l. Turk Shahis coins include silver and copper drachma with portraits of the rulers wearing a distinctive triple crescent crown. The emblems of these Buddhist Turks were also included on the coin. Inscriptions were in Bactrian. Approximate date: A.D. 665–850.

m. Shahiya or Shahis of Kabul coins include silver, bronze, and copper drachma with inscriptions of military and chief commanders. Hindu imagery is included on the coin design. The two main types of images are the bull and horseman and the elephant and lion. Approximate date: A.D. 565–879.

n. Chinese coins belonging primarily to the Tang Dynasty are found in archaeological contexts in Afghanistan. Approximate date: A.D. 618–907.

o. Ghaznavid coins include gold dinars with bilingual inscriptions, Islamic titles in Arabic and Sharda and images of Shiva, Nandi, and Samta Deva. Approximate date: A.D. 977–1186.

p. Ghurid coins include silver and gold tangas with inscriptions and abstract goddess iconography. Approximate date: A.D. 879–1215.

q. Timurid coins include silver and copper tangas and copper dinars, both coin types are decorated with Arabic inscriptions. Approximate date: A.D. 1370–1507.

r. Mughal coins include shahrukhi, gold mithqal, gold mohur, silver rupee, copper dams, and copper falus. The iconography varies, depending on the ruler, but popular designs include images of the Hindu deities Sita and Ram, portrait busts of the rulers, and the twelve zodiac signs. Approximate date: A.D. 1526–1857.

6. Ceremonial Objects—Includes highly decorative axes, staffs, swords, and other types of implements. While the forms may be similar to utilitarian objects, ceremonial objects are too decorative to have been used as everyday tools. Approximate date: 3000 B.C.–A.D. 1747.

7. Statuary, Ornaments, and other Relief Sculpture—Primarily in copper, gold, silver, bronze, or alloys of copper, tin lead, and zinc. Includes free-standing or supported statuary; relief plaques or tablets; votive ornaments; and other ornaments. Decoration may include humans, animals, mythological figures (*e.g.*, griffins or horned lions), and/or scenes of activity. Plaques or tablets may have been cast, chased, and/ or embossed. Plaques and tablets may have inlay of other types of material. Statuary includes objects fashioned as humans, animals, or mythological figures; miniature chariots; wheeled carts; and other types of objects. Decorative elements may include floral, geometric, or vegetal motifs; inscriptions in multiple languages or scripts. Statuary includes naturalized and stylized forms.

8. Stamps and Seals—Primarily in cast bronze, and alloys of copper, tin, lead, and zinc; includes stamps and seals in gold or silver. Types include amulets, rings, small devices with engraving on one side, and others. Stamps and seals may have engravings that include animals, human figures, geometric designs, inscriptions in various languages

and scripts, and/or floral/vegetal motifs. May have inlay of other types of material. Approximate date: 4th century B.C.–A.D. 1500.

D. *Plaster, Stucco, and Unfired Clay*—Includes animal figures, columns, human figures, reliefs, medallions, ornaments, panels, plaques, roundels, window screens, and other architectural and non-architectural decoration or sculpture. There may be traces of paint, gilding, and/or inscriptions in multiple languages and scripts. Stucco panels may have elaborate scenes of animals and human activity (such as hunting or elite activity) and/or floral, geometric, and vegetal patterns. Stucco panels may have been made with molds. Stucco figures and objects may have strong resemblance to Hellenistic styles. Painted clay objects are often represented as single individuals, such as a Buddha, Bodhisattva, or a male or female patron of a religious complex. Unfired clay roundels with stamped impressions used as sealing material are included.

E. *Painting*—Includes wall painting and fragments, often having a white base coat on ground clay mixed with small stones and vegetal matter; color is often applied in thin pigments in primary colors; figures are often outlined in black. Subjects vary, but images of Buddha figures and mandalas are common.

F. *Ivory and Bone*

1. Non-Architectural Relief Panels and Plaques—Highly and elaborately decorated and engraved panels and plaques with low- and high-relief carvings. May include imagery of humans, animals, and human activity; floral, geometric, and/or vegetal designs. Begram ivory panels are a typical example. Approximate date: 1st century A.D.

2. Statuary—Includes carved animal and human figures. Floral, geometric, and/or vegetal decorative elements may be part of the carved design. May be in low- or high-relief. Begram Ivory figurines are an example.

3. Containers, Handles, and other Non-Architectural Objects—Includes buckles, buttons, combs, game die, handles on daggers, mirrors, pins, and other personal objects.

4. Furniture—Includes arms, brackets, handles, finials, footstools, and legs in chairs, chests, trunks, and other types of furniture.

G. *Glass*

1. Architectural Elements—Mosaics and stained glass with various designs and colors. May be part of large designs with floral, geometric, and/or vegetal motifs; often with religious imagery. Includes glass inlay used in architectural elements. Approximate date: 1st century A.D.–A.D. 1747.

2. Beads/Jewelry—Includes beads that may be cylindrical, spherical, conical, disc, and others. Decorations may include bevels, incisions, and/or raised decoration. Includes glass inlay used in other types of beads and/or jewelry. Approximate date: 1st century A.D.–A.D. 1747.

3. Vessels—Vessel types may form conventional shapes such as beakers, bowls, cups, dishes, flasks, goblets, jars, mugs, perfume bottles, and vases, and other shapes such as cosmetic containers, lamps, medicine droppers, and others. Flasks and drinking vessels may be shaped as animals or fish. Some vessel types may have been blown into molds. May have decorative elements of high-relief including honeycomb patterns and waves. May be monochrome or polychrome. Some polychrome glass vessels are elaborately colored and decorated with animals, humans, human activity; floral, geometric, and vegetal designs. Some polychrome glass vessels may have been elaborately painted with scenes of humans, animals, and/or scenes of human activity or have traces of paint. Vessels created and molded using mosaic techniques are included. Approximate date: 1st century A.D.–A.D. 1747.

4. Ornaments—Includes glass medallions. May have molded decorations including, but not limited to, animals, humans, floral, geometric, and vegetal motifs. Typically associated with the Ghaznavid and Ghurid periods. Approximate date: A.D. 1000–1200.

H. *Leather, Birch Bark, Velum, Parchment, and Paper*

1. Books and Manuscripts—Includes scrolls, sheets, or bound volumes. Includes secular and religious texts. Text may be written on birch bark, velum, parchment, or paper, and may be gathered into leather bindings or folios. Calligraphy is written in ink. Books and manuscripts are written in multiple languages and scripts, but Arabic and Persian are most common. Books and manuscripts may be further embellished or decorated with colorful floral, geometric, or vegetal motifs; images of animals; images of humans and human activity. Decoration, embellishment, illumination, and/or painting may have been added after the text was written. Occasionally, there are portraits or illustrations of single figures. May be in miniature form. Timurid period manuscript types are typically highly colorful with polychrome decoration, embellishment, illumination, and/or painting. Approximate date: 1st century A.D.–A.D. 1750.

2. Items of Personal Adornment—Primarily in leather, including bracelets, belts, necklaces, sandals, shoes, and other types of jewelry. May be embroidered or embellished with other types of materials. Leather goods may have also been used in conjunction with other types of textiles.

I. *Textiles*—Includes silk, linen, cotton, hemp, wool, damasee, samit, other woven materials used in basketry and other household goods; clothing, shoes, jewelry, and items of personal adornment; burial shrouds; tent coverings and domestic textiles; carpets; and others. Decorative techniques may include embroidery with various motifs, including, but not limited to, animals, floral, geometric, and vegetal motifs or textiles may be undecorated. May have patterns woven into the body of the textile. Gold or silver threads may be woven into other fabrics, for example in samit textiles. May have traces of paint. Approximate date: 1st century A.D.—A.D. 1747.

J. *Wood, Shell, and other Organic Material*—Includes architectural pieces made from wood; statuary and figurines; furniture; jewelry and other items of personal adornment; musical instruments; vessels and containers; and engraved stamps and seals from archaeological contexts.

K. *Human Remains*—Human remains and fragments of human remains, including skeletal remains, soft tissue, and ash from the human body that may be preserved in burial, reliquaries, and other contexts.

II. Ethnological Material

A. *Stone, brick, plaster, and stucco*—Primarily in brick, plaster, stone (e.g., alabaster, limestone, marble, steatite schist), and stucco. Includes structural elements such as bricks and blocks from walls, ceilings, and floors; columns; door frames; false gables; friezes; jalis; lintels; mihrabs; minarets; niches; pillars; plinths; qiblas; and others. Also includes decorative elements such as carved bases, ceiling decoration, funerary headstones and monuments, fountains, monoliths, niches, plaques, roundels, slabs, and stelae bases. May be plain, molded, carved, or inscribed in various languages and scripts. Decorative elements may be in high- or low-relief. Architectural elements may include relief and inlay sculptures that were part of a building (e.g., mausoleums, mosques, minarets, palaces, religious structures, public buildings, royal buildings, shrines, stupas, and others), such as friezes, panels, or stone figures. Architectural elements may have religious imagery or may have been part of religious structures.

B. *Tiles*—Includes glazed tiles and glazed bricks used to decorate civic and religious architecture. Tiles are mostly square, but some are polygonal. Types may be molded and glazed in monochrome or polychrome. Turquoise and manganese are commonly used for glazing. Some tiles can be molded with decoration, with low- and high-relief

techniques. Decorative molding may be in floral, geometric, or vegetal motifs; may have animal imagery. May have inscriptions in multiple languages and scripts.

C. Stained Glass—Stained glass is glass that is colored and arranged in various patterns, often with floral, geometric, and/or vegetal designs. Wooden dividers may separate the panels of glass. Often in the windows of religious buildings, including mosques.

D. Wood

1. Architectural elements—This type encompasses both structural and decorative elements including walls, doors, door frames, posts, lintels, jambs, finials, figural capitals, panels, veranda shutters, window fittings, window frames, balconies, minbars, mihrabs, or pieces of any of these objects. Architectural elements may be repurposed into newer and different items, such as a wood panel into a table or a door jamb into a bench. Well known examples are from the Nuristan region or date to the Timurid and Mughal period.

2. Nuristani Figures—Includes life-sized and hand-held stylized wooden figures of ancestors and deities. A small number are horse and rider types. Many have sustained damage including small holes and cracks, others may be partially defaced, and others may be cut in half for ease of transport. Approximate date: A.D. 1400–1920.

3. Musical Instruments—Type includes stringed and percussion instruments associated with the Nuristani culture. Typically made in a variety of materials including animal hair, animal hides, cloth, nylon, and wood. Stringed instruments may have bows often crafted with horsehair or silk; may have ivory inlay; may have tuning pegs. Approximate date: A.D. 1400–1920.

References

Afghanistan: Hidden Treasures from the National Museum, Kabul, 2008, edited by Frank Hiebert and Pierre Cambon, National Geographic, Washington DC.

Afghanistan: Une Histoire Millenaire, 2002, Musee Guimet, Paris.

After Alexander: Central Asia Before Islam, 2007, Edited by Joe Cribb and Georgina Herrmann, The British Academy by Oxford University Press, Oxford.

Ancient Art from Afghanistan: Treasures of the Kabul Museum, 1966, Benjamin Rowland Jr., Asia Society, New York.

Buddhist Art of Gandhara: In the Ashmolean Museum, 2018, David Jongeward, Ashmolean Museum and University of Oxford, Oxford.

National Museum of Herat—Areia Antiqua Through Time, 2007, Ute Frank, Deutsches Archäologisches Institut Berlin, Eurasien-Abteilung.

The Monuments of Afghanistan: History, Archaeology, and Architecture, 2008, Warwick Ball, I.B. Tauris & Co Ltd, New York.

Typology and Chronology of Ceramics of Bactria, Afghanistan 600 BCE–500 CE, 2015, Charlotte Elizabeth Maxwell-Jones, University of Michigan, Ann Arbor.

Inapplicability of Notice and Delayed Effective Date

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

Regulatory Flexibility Act

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

Executive Order 12866

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

Signing Authority

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

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

List of Subjects in 19 CFR Part 12

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

Amendment to CBP Regulations

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

PART 12—SPECIAL CLASSES OF MERCHANDISE

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

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

* * * * *

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

* * * * *

■ 2. In § 12.104g, the table in paragraph (b) is amended by adding Afghanistan to the list in alphabetical order to read as follows:

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

* * * * *

(b) * * *

State party	Cultural property	Decision No.
Afghanistan.....	Archaeological and ethnological material from Afghanistan	CBP Dec. 22–04.
* * *	* * *	* * *

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

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

**CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM
(CTPAT) PROGRAM AND CTPAT TRADE COMPLIANCE
PROGRAM**

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

ACTION: 60-Day notice and request for comments; revision 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 April 19, 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 1651-0077 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: Customs Trade Partnership against Terrorism (CTPAT) Program and CTPAT Trade Compliance.

OMB Number: 1651-0077.

Current Actions: Revision.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: The CTPAT Program comprises of two different program divisions, CTPAT Security and CTPAT Trade Compliance. The CTPAT Security program is designed to safeguard the world's trade industry from terrorists and smugglers by prescreening its participants. The CTPAT Program applies to United States and non-resident Canadian importers, United States exporters, customs brokers, consolidators, ports and terminal operators, carriers of cargo in air, sea and land, and Canadian and Mexican manufacturers. The Trade Compliance division is for importers only.

The CTPAT Program application requests an applicant's contact and business information, including the number of company employees, the number of years in business, and a list of company officers. This collection of information is authorized by the SAFE Port Act (Pub. L. 109-347). Additional information is being collected based on CTPAT's new vetting process as the prior vetting process was found to be insufficient in being able to identify violators. Not collecting this information would result in companies that are high risk for committing illegal activity to be allowed into, and continue to be part of, the CTPAT program. When the previous vetting process was reviewed by CBP's National Targeting Center, they found the vetting process to be ineffective in capturing high risk companies. This means companies that are high risk were allowed to be CTPAT members and enjoy the

many trade facilitation benefits of membership, such as having their cargo facilitated through CBP ports of entry via FAST lanes and front of the line treatment, fewer inspections by CBP, and various other benefits. Those companies vetted under the CTPAT program's current "standard" vetting process have/had to provide only the company points of contact (POC), telephone number and name. As the required information is not sufficient to gather specific data on a specific person to get an exact match, CBP is adding the following data elements to assist with vetting CTPAT members:

- Date of Birth (DOB)
- Country of Birth
- Country of Citizenship
- Travel Document number (*e.g.*, visa or passport number)
- Immigration status information (*e.g.*, Alien Registration Number, Naturalization number)
- Driver's license information (*e.g.*, state and country of issuance, number, date of issuance/expiration)
- Social Security Number (The Social Security Number is a means to verify the identity of an owner/upper manager within the company. This is particularly helpful with common names or the Spanish names where individuals may have multiple last names that may or may not be used in records. In these instances, we may need to go beyond the name and DOB to ensure we are looking at the right individual and making the correct vetting decision for the company.)
- Trusted Traveler membership type and number (*e.g.*, FAST/NEXUS/ SENTRI/Global Entry ID); and
- Registro Federal de Contribuyentes (RFC) Persona Fisica (needed for Mexican Foreign Manufacturers, Highway Carriers, and Long-Haul Carriers Only).
- internet Protocol (IP) Address
- An IP address serves two main functions: Host or network interface identification and location addressing. Usually, the IP address is enough to trace the connection back to the ISP (internet Service Provider). In some instances of Post Incident Analysis, conducted

after a company in the program has been involved in an incident, HSI has asked CTPAT if we have IP addresses for users in our system, but we have been unable to provide them. Having the IP address captured could help to assist CBP/HSI in identifying users/locations, as needed, for law enforcement purposes. There are also instances where users (often consultants) will try to sign the CTPAT user agreement or submit security profiles on behalf of companies, which they are not allowed to do. This leaves the company liable to the actions taken by someone not authorized to take those actions. If we are able to capture the IP address, CTPAT might be able to identify cases where consultants are using unauthorized logins or logging in using Company Officer accounts in order to make it appear that submissions are coming from a Company Officer.

The CTPAT Trade Compliance program is an optional component of the CTPAT program and adds trade compliance aspects to the supply chain security aspects of the CTPAT program. The CTPAT security program is a prerequisite to applying to the CTPAT Trade Compliance program. CTPAT members are given the opportunity to receive additional benefits in exchange for a commitment to assume responsibility for monitoring their own compliance by applying to the CTPAT Trade Compliance program. After a company has completed the security aspects of the CTPAT program and is in good standing, it may opt to apply to the CTPAT Trade Compliance component. The CTPAT Trade Compliance program strengthens security by leveraging the CTPAT supply chain requirements, identifying low-risk trade entities for supply chain security, and increasing the overall efficiency of trade by segmenting risk and processing by account.

The CTPAT Trade Compliance program is open to U.S. and non-resident Canadian importers that have satisfied both the CTPAT supply chain security and trade compliance requirements.

The CTPAT Trade Compliance program application includes questions about the following:

- Primary Point of Contact including name, title, email address, and phone number
- Business information including Company Name, Company Address, Company phone number, Company website, Company type (private or public), CBP Bond information, Importer of Record Number, and number of employees
- Information about the applicant's Supply Chain Security Profile
- Trade Compliance Profile and Internal Control Operating Procedures of the applicant

- Company Broker information
- Training material for Supply Chain Security and Trade Compliance
- Risk Assessment documentation and results
- Period testing documentation and results
- Prior disclosure history
- Partner Government Agency affiliation information

After an importer obtains CTPAT Trade Compliance membership, the importer will be required to submit an Annual Notification Letter to CBP confirming that they are continuing to meet the requirements of the program. This letter should include: Personnel changes that impact the CTPAT Trade Compliance Program; organizational and procedural changes; a summary of risk assessment and self-testing results; a summary of post-entry amendments and/or disclosures made to CBP; and any importer activity changes within the last 12-month period.

Type of Information Collection: CTPAT Application.

Estimated Number of Respondents: 750.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 750.

Estimated Time per Response: 20 hours.

Estimated Total Annual Burden Hours: 15,000.

Type of Information Collection: CTPAT Trade Compliance Application.

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 50.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 100.

Type of Information Collection: CTPAT Trade Compliance Program's Annual Notification Letter.

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 50.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 100.

Dated: February 14, 2022.

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

[Published in the Federal Register, February 18, 2022 (85 FR 09371)]

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**APPLICATION FOR EXTENSION OF BOND FOR
TEMPORARY IMPORTATION (FORM 3173)**

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

ACTION: 60-Day notice and request for comments; revision 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 April 25, 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 1651-0015 in the subject line and the agency name. Please use the following method to submit comments:

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

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

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

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

Overview of This Information Collection

Title: Application for Extension of Bond for Temporary Importation.

OMB Number: 1651-0015.

Form Number: CBP Form 3173.

Current Actions: CBP proposes to extend the expiration date of this information collection and to revise this information collection to allow electronic submission via the Document Image System (DIS). There is no change to the information collected and no change to CBP Form 3173.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: Imported merchandise which is to remain in the customs territory for a period of one year or less without the payment of duties with the intent to destroy or export is entered as a temporary importation of goods under bond (TIB), as authorized under the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202). The general requirements for all TIB categories and specific rules for certain types of goods are set forth the notes to Chapter 98 (HTSUS), and in the U.S. notes, article provisions, and rates of duty columns to subchapter XIII.

Consistent with 19 CFR 10.37, when this time period is not sufficient, importers and brokers may request an extension by submitting a CBP Form 3173, “*Application for Extension of Bond for Temporary Importation*”, either electronically or manually, to the Center Director. The period of time may be extended for not more than two further periods of 1 year each, or such shorter periods as may be appropriate. An Extension may be granted by CBP, upon written or electronic submission of a CBP Form 3173, provided that the articles have not been exported or destroyed before receipt of the application, and liquidated damages have not been assessed under the bond before receipt of the application. TIB extensions requested by the Trade will automatically be accepted in the Automated Customs Environment (ACE), but CBP can deny an extension as necessary. CBP Form 3173 is provided for in 19 CFR 10.37 and is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=3173>.

CBP published its plan to conduct a test of the National Customs Automation Program (NCAP) concerning document imaging in the **Federal Register** (77 FR 20835), on April 4, 2012. Under the test, certain ACE participants are able to submit electronic images of a specific set of CBP and Participating Government Agency (PGA) forms and supporting information to CBP. Specifically, importers, and brokers, are allowed to submit official CBP documents and specified PGA forms via the Electronic Data Interchange (EDI). Although the first phase of the DIS test was limited to certain CBP and PGA forms, the DIS Guidelines were updated over time to include various entry summary documents.

This information collection is necessary to ensure compliance with 19 CFR 10.37 and the DIS guidance.

Proposed Change:

CBP Form 3173 is considered an entry summary document, and ACE participants will be able to submit the CBP Form 3173 electronically through the Document Image System (DIS).

Type of Information Collection: Application for Extension of Bond for Temporary Importation (Form 3173).

Estimated Number of Respondents: 1,822.

Estimated Number of Annual Responses per Respondent: 14.

Estimated Number of Total Annual Responses: 25,509.

Estimated Time per Response: .217 hours.

Estimated Total Annual Burden Hours: 5,527.

Dated: February 16, 2022.

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

[Published in the Federal Register, February 22, 2022 (85 FR 09633)]

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**APPLICATION FOR FOREIGN-TRADE ZONE ADMISSION
AND/OR STATUS DESIGNATION, AND APPLICATION FOR
FOREIGN-TRADE ZONE ACTIVITY PERMIT**

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

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

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

DATES: Comments are encouraged and must be submitted (no later than March 25, 2022) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (86 FR 66573) on November 23, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Foreign-Trade Zone Admission and/or Status Designation, and Application for Foreign-Trade Zone Activity Permit.

OMB Number: 1651-0029.

Form Number: 214, 214A, 214B, 214C, and 216.

Current Actions: Extension without change of an existing information collection.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Foreign trade zones (FTZs) are geographical enclaves located within the geographical limits of the United States but for tariff purposes are considered to be outside the United States. Imported merchandise may be brought into FTZs for storage, manipulation, manufacture, or other processing and subsequent removal for exportation, consumption in the United States, or destruction. A company bringing goods into an FTZ has a choice of zone status (privileged/non-privileged foreign, domestic, or zone-restricted), which affects the way such goods are treated by

Customs and Border Protection (CBP) and treated for tariff purposes upon entry into the customs territory of the United States.

CBP Forms 214, 214A, 214B, and 214C, which make up the *Application for Foreign-Trade Zone Admission and/or Status Designation*, are used by companies that bring merchandise, except in certain circumstances including, but not limited to, domestic status merchandise, into an FTZ to register the admission of such merchandise into FTZs and to apply for the appropriate zone status. Form 214A is not filled out separately by respondents; it is simply a copy of Form 214 that CBP gives to the Census Bureau. Form 214B is a continuation sheet for Form 214 that respondents use when they need more room to add line items to the form. Form 214C is a continuation sheet for Form 214A that respondents use when they need more room to add line items to the form.

CBP Form 216, *Foreign-Trade Zone Activity Permit*, is used by companies to request approval to manipulate, manufacture, exhibit, or destroy merchandise in an FTZ.

These FTZ forms are authorized by 19 U.S.C. 81 and provided for by 19 CFR 146.22, 146.32, 146.35, 146.36, 146.37, 146.39, 146.40, 146.41, 146.44, 146.52, 146.53, and 146.66. These forms are accessible at: <http://www.cbp.gov/newsroom/publications/forms>.

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

Type of Information Collection: Form 214

Estimated Number of Respondents: 6,749.

Estimated Number of Annual Responses per Respondent: 25.

Estimated Number of Total Annual Responses: 168,725.

Estimated Time per Response: 15 minutes (0.25 hours).

Estimated Total Annual Burden Hours: 42,181.

Type of Information Collection: Form 216.

Estimated Number of Respondents: 2,500.

Estimated Number of Annual Responses per Respondent: 10.

Estimated Number of Total Annual Responses: 25,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4,167.

Dated: February 17, 2022.

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

[Published in the Federal Register, February 23, 2022 (85 FR 10226)]

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**ARRIVAL AND DEPARTURE RECORD, NONIMMIGRANT
VISA WAIVER ARRIVAL/ DEPARTURE, ELECTRONIC
SYSTEM FOR TRAVEL AUTHORIZATION (ESTA)**

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

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

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

DATES: Comments are encouraged and must be submitted (no later than March 25, 2022) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (86 FR 64508) on November 18, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/ Departure, Electronic System for Travel Authorization (ESTA).

OMB Number: 1651-0111.

Form Number: CBP Forms I-94 and I-94W.

Current Actions: Revision of an existing information collection.

Type of Review: Revision.

Affected Public: Individuals.

Abstract: Forms I-94 (Arrival/ Departure Record) and I-94W (Nonimmigrant Visa Waiver Arrival/ Departure Record) are used to document a traveler's admission into the United States. These forms are filled out by non-immigrants and are used to collect information on citizenship, residency, passport, and contact information. The data elements collected on these forms enable the Department of Homeland Security (DHS) to perform its mission related to the screening of noncitizen visitors for potential risks to national security and the determination of admissibility to the United States.

The Electronic System for Travel Authorization (ESTA) applies to non-immigrants seeking to travel to the United States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States without a visa. Travelers who are entering the United States under the VWP in the air or sea environment, and who have a travel authorization obtained through ESTA, are not required to complete the paper Form I-94W. I-94 is provided for by 8 CFR 235.1(h), ESTA is provided for by 8 CFR 217.5.

On December 18, 2015, the President signed into law the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (“VWP Improvement Act”) as part of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2242. To meet the requirements of this new act, DHS strengthened the security of the VWP through enhancements to the ESTA applications and to the Form I-94W, Form I-94 is not affected by this change. Many of the provisions of the new law became effective on the date of enactment of the VWP Improvement Act. The VWP Improvement Act generally makes certain nationals of VWP countries ineligible (with some exceptions) from traveling to the United States under the VWP. To ensure compliance with the VWP Improvement Act, CBP will continuously update the application question with the list of nationals ineligible to travel to the United States under the VWP, as designated in accordance with section 217(a)(12) of the Immigration and Nationality Act, as amended (8 U.S.C. 1187(a)(12)).

Recent Changes

1. *Complete biographic page, passport photograph and MRZ:* Currently, the ESTA website allows applicants to upload their passport page to capture the passport’s machine-readable zone (MRZ), which automatically populates the individual’s biographic information, eliminating the need to manually enter the information into the ESTA application. Applicants were able to voluntarily submit a photo with their ESTA application, CBP will now require applicants to upload a picture of their complete biographic passport page, including the MRZ and passport photograph. The addition of passport photos will increase CBP’s capability to confirm an applicant’s identity and compare the photo against CBP and other government holdings to locate any derogatory information. Photos collected as part of the ESTA applications may also be used to match travels through the biometric entry/exit process. CBP is amending the ESTA application to require the uploading of the complete biographic page to include the photograph and the MRZ.

2. *Mandatory Social Media Collection:* On May 31, 2019, the Department of State updated its immigrant and nonimmigrant visa application forms to request additional information, including social media identifiers, from most U.S. visa applicants worldwide. In keeping with this change, CBP is amending the ESTA application to change social media collection from optional to mandatory. National security is CBP's top priority when adjudicating ESTA applications, and every prospective traveler to the United States undergoes extensive security screening. CBP is continually working to find mechanisms to improve our screening processes to protect U.S. citizens, while supporting legitimate travel to the United States. CBP already requests certain contact information, travel history and family member information from all ESTA applicants. Making social media a mandatory field in the ESTA application will enhance our vetting processes and assist in confirming applicants' identities. While the completion of the field is mandatory, applicants can still select "none".

3. *Biometric Information Collection:* CBP will begin collecting biometric data for identity confirmation on ESTA applications. ESTA applicants will be prompted to take a selfie or "live" photo to conduct a "liveness" test to determine if the ESTA application is interfacing with a physically present human being and not an inanimate object, or if it is a photo of someone other than the lawful passport holder. Respondents will be able to scan their passport biographic page, in order to submit biographic information, including passport photograph.

4. *ESTA Mobile Application (App):* CBP will implement the ESTA Mobile Application to provide an additional and more convenient option for intending VWP travelers to obtain an ESTA. The Mobile App will collect biometric data for confirmation of identity. This is another enhancement that will assist in preventing persons intending to travel to the United States under the VWP by fraud.

This new function will be accessible via mobile devices, *i.e.*, mobile phones, tablets. The portability of mobile devices will facilitate applying for an ESTA application, because an ESTA applicant will not be limited to applying on a desktop computer. The first phase will enable Android devices to use the ESTA App, and the second phase will follow with iOS. No implementation date has been set for iOS implementation.

The Mobile App will be very similar to the already established ESTA application website at <https://esta.cbp.dhs.gov>, but with Near Field Communication (NFC).

The NFC:

- Allows users to scan the passport e-Chip (embedded in the passport) to extract passenger data.
- A Mobile Device with NFC capability is required to scan the Passport e-Chip when applying for a new application using the ESTA Mobile App.
- Data on the e-Chip enables the NFC Scan.
- If the mobile device does not have NFC capability, the user can submit an ESTA application via the established website.

After determining if the mobile device has NFC capability:

1. The applicant takes a selfie or “live” photo (another person may also take a photo of the applicant).

2. The Mobile App will do a “liveness” test to determine that it is interfacing with a physically present human being and not an inanimate object, or if it is a photo of someone other than the lawful passport holder.

3. If the passport photo does not match the “liveness” photo, a “Third Party Acknowledgement” screen will display, which requires confirmation.

4. The applicant proceeds by completing the data fields the same as with the established ESTA application.

5. When the applicant completes the application, he/she can review his/her responses.

The payment process will be the same as the established ESTA application, and the cost of each ESTA application will continue to be 14 USD, except in the case of a denial, the fee is 4 USD.

Type of Information Collection: I-94

Estimated Number of Respondents: 4,387,550.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 4,387,550.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 585,007.

Type of Information Collection: I-94 Website

Estimated Number of Respondents: 3,858,782.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 3,858,782.

Estimated Time per Response: 4 minutes.

Estimated Total Annual Burden Hours: 257,252.

Type of Information Collection: I-94W

Estimated Number of Respondents: 941,291.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 941,291.

Estimated Time per Response: 16 minutes.

Estimated Total Annual Burden Hours: 251,011.

Type of Information Collection: ESTA Website Application

Estimated Number of Respondents: 15,000,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 15,000,000.

Estimated Time per Response: 23 minutes.

Estimated Total Annual Burden Hours: 5,750,000.

Type of Information Collection: ESTA Mobile Application (App)

Estimated Number of Respondents: 500,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 500,000.

Estimated Time per Response: 28 minutes.

Estimated Total Annual Burden Hours: 233,333.

Dated: February 17, 2022.

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

[Published in the Federal Register, February 23, 2022 (85 FR 10223)]

ELECTRONIC VISA UPDATE SYSTEM (EVUS)

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

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

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

DATES: Comments are encouraged and must be submitted (no later than March 25, 2022) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (86 FR 64507) on November 18, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Electronic Visa Update System (EVUS).

OMB Number: 1651-0139.

Form Number: N/A.

Current Actions: Revision of an existing information collection with no change in burden.

Type of Review: Revision.

Affected Public: Individuals.

Abstract: DHS developed the Electronic Visa Update System (EVUS) to assure robust screening of foreign nationals prior to travel to the United States. EVUS provides for robust traveler screening and verification to better identify foreign nationals who may be inadmissible to the United States. This results in enhanced national security, improved public safety, and a reduced number of delays upon arrival in the United States, all while facilitating legitimate travel.

Initially, the program is limited to nonimmigrant aliens presenting passports issued by the People's Republic of China (PRC) containing unrestricted, maximum validity B-1 (business visitor), B-2 (visitor for pleasure), or combination B-1/B-2 visas, generally valid for 10 years. PRC membership in EVUS became possible on November 12, 2014, when, in a reciprocal agreement, the U.S. Department of State expanded the validity of U.S. visitor visas issued to PRC nationals from one to ten years.

To ensure compliance with the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, Pub. L. 114-113, 129 Stat. 2242, CBP will continuously update the application question with the list of nationals ineligible to travel to the United States under the VWP, as designated in accordance with section 217(a)(12) of the Immigration and Nationality Act, as amended (8 U.S.C. 1187(a)(12)).

Recent Changes: On May 31, 2019, the Department of State updated its immigrant and nonimmigrant visa application forms to request additional information, specifically social media identifiers, from most U.S. visa applicants worldwide. As a result, DHS is changing the EVUS application social media data field from optional to mandatory. National security is the top priority when adjudicating EVUS applications, and every prospective traveler to the United States undergoes extensive security screening. CBP is continually working to find mechanisms to improve our screening processes to protect U.S. visitors while supporting legitimate travel to the United States. DHS already requests information on contacts, travel history,

and family members from all EVUS applicants. Changing the social medial field to mandatory in the EVUS application will enhance our vetting capabilities and assist in confirming applicants' identities. While the field is mandatory, applicants will still have the ability to select "none".

Type of Information Collection: EVUS

Estimated Number of Respondents: 3,595,904.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 3,595,904.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 1,499,492.

Dated: February 17, 2022.

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

[Published in the Federal Register, February 23, 2022 (85 FR 10225)]



STAKEHOLDER SCHEDULING APPLICATION

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

ACTION: 30-day notice and request for comments; this is a new collection of information.

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

DATES: Comments are encouraged and must be submitted (no later than March 25, 2022) to be assured of consideration.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema,

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (86 FR 10115) on February 18, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Stakeholder Scheduling Application.

OMB Number: 1651-NEW.

Current Actions: New collection of information.

Type of Review: This is a new information collection.

Affected Public: Individuals and Businesses.

Abstract: The Stakeholder Scheduling capability is a mobile application within the "CBP OneTM" app that will standardize and automate the manual process of brokers and travelers

making and updating appointments with CBP for various services. Currently, Customs and Border Protection Officers (CBPOs) and CBP Agriculture Specialists (CBPAS) spend significant time exchanging phone calls, faxes, and emails from stakeholders to schedule inspection services. This includes inspections of perishable cargo, non-perishable cargo that have been identified for mandatory examinations, and commercial vessel and commercial or private air arrivals. Based on security vetting, CBP notifies stakeholders that certain cargo requires a scan by CBP Non-Intrusive Inspection technology prior to release. Stakeholders then schedule with CBP a time and location for the scans to be conducted. Pilots and other stakeholders contact CBP to schedule a time and location for the inspections of commercial and private carriers (including occupants) or commercial vessels upon arrival from foreign countries. Additionally, travelers who carry-on sensitive agriculture via air carrier are required to be inspected by CBP and they must notify CBP prior to their arrival into the United States.

The following legal authorities permit CBP's collection of border crossing information: Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Pub. L. 108-458, 118 Stat. 3638; Immigration and Nationality Act, as codified at 8 U.S.C. 1185 and 1354; Aviation and Transportation Security Act of 2001 (ATSA); Enhanced Border Security and Visa Reform Act of 2002; and Tariff Act of 1930 as amended, 19 U.S.C. 66, 1433, 1459, 1485, 1624, and 2071.

Type of Information Collection: Stakeholder Scheduling Application

Estimated Number of Respondents: 2,000.

Estimated Number of Annual Responses per Respondent: 127.

Estimated Number of Total Annual Responses: 254,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 8,467.

Dated: February 17, 2022.

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

[Published in the Federal Register, February 23, 2022 (85 FR 10224)]

TRUSTED TRAVELER PROGRAMS AND U.S. APEC BUSINESS TRAVEL CARD

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

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

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

DATES: Comments are encouraged and must be submitted (no later than March 25, 2022) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 86 FR Page 69661) on December 8, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address

one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Trusted Traveler Programs and U.S. APEC Business Travel Card.

OMB Number: 1651-0121.

Form Number: 823S (SENTRI) and 823F (FAST).

Current Actions: Extension without change of an existing collection.

Type of Review: Extension (without change).

Affected Public: Individuals and businesses.

Abstract: This collection of information is for CBP's Trusted Traveler Programs including the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which allows expedited entry at specified southwest land border ports of entry; the Free and Secure Trade program (FAST), which provides expedited border processing for known, low-risk commercial drivers; and Global Entry which allows pre-approved, low-risk, air travelers expedited clearance upon arrival into the United States.

The purpose of all of these programs is to provide prescreened travelers expedited entry into the United States. The benefit to the traveler is less time spent in line waiting to be processed. These Trusted Traveler programs are provided for in 8 CFR 235.7 and 235.12.

This information collection also includes the U.S. APEC Business Travel Card (ABTC) Program, which is a voluntary program that allows U.S. citizens to use fast-track immigration lanes at airports in the 20 other Asia-Pacific Economic Cooperation (APEC) member countries. This program is mandated by the Asia-Pacific Economic

Cooperation Business Travel Cards Act of 2011, Public Law 112–54 and provided for by 8 CFR 235.13.

These collections of information include the data collected on the applications and kiosks for these programs. Applicants may apply to participate in these programs by using the Trusted Traveler Program (TTP) at <https://ttp.cbp.dhs.gov/>. Or at Trusted Traveler Enrollment Centers.

After arriving at the Federal Inspection Services area of the airport, participants in Global Entry can undergo a self-serve inspection process using a Global Entry kiosk. During the self-service inspection, participants have their photograph and fingerprints taken, submit identifying information, and answer several questions about items they are bringing into the United States. When using the Global Entry kiosks, participants are required to declare all articles being brought into the United States pursuant to 19 CFR 148.11.

Type of Information Collection: SENTRI (823S)

Estimated Number of Respondents: 276,579.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 276,579.

Estimated Time per Response: 40 minutes (0.67 hours).

Estimated Total Annual Burden Hours: 185,308.

Type of Information Collection: FAST (823F)

Estimated Number of Respondents: 20,805.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 20,805.

Estimated Time per Response: 40 minutes (0.67 hours).

Estimated Total Annual Burden Hours: 13,939.

Type of Information Collection: Global Entry

Estimated Number of Respondents: 1,392,862.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,392,862.

Estimated Time per Response: 40 minutes (0.67 hours).

Estimated Total Annual Burden Hours: 933,217.

Type of Information Collection: ABTC

Estimated Number of Respondents: 9,858.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 9,858.

Estimated Time per Response: 10 minutes (0.17 hours).

Estimated Total Annual Burden Hours: 1,676.

Type of Information Collection: Kiosks

Estimated Number of Respondents: 3,161,438.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 3,161,438.

Estimated Time per Response: 1 minute (0.016 hours).

Estimated Total Annual Burden Hours: 50,583.

Dated: February 17, 2022.

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

[Published in the Federal Register, February 23, 2022 (85 FR 10227)]

**PETITION FOR REMISSION OR MITIGATION OF
FORFEITURES AND PENALTIES INCURRED
(CBP FORM 4609)**

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

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

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

DATES: Comments are encouraged and must be submitted (no later than March 25, 2022) to be assured of consideration.

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

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 86 FR Page 67963) on November 30, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred.

OMB Number: 1651–0100.

Form Number: CBP Form 4609.

Current Actions: Extension without change.

Type of Review: Extension (without change).

Affected Public: Individuals and Businesses.

Abstract: CBP Form 4609, *Petition for Remission of Forfeitures and Penalties Incurred*, is completed, and filed with the CBP

FP&F Officer designated in the notice of claim by individuals who have been found to be in violation of one or more provisions of the Tariff Act of 1930, or other laws administered by CBP. Persons who violate the Tariff Act of 1930, or other laws administered by CBP, are entitled to file a petition seeking remission or mitigation of a fine, penalty, or forfeiture incurred under these laws. This petition is submitted on CBP Form 4609. The information provided on this form is used by CBP personnel as a basis for granting relief from forfeiture or penalty. CBP Form 4609 is authorized by 19 U.S.C. 1618 and provided for by 19 CFR 171.1. It is accessible at <https://www.cbp.gov/newsroom/publications/forms?title=4609>.

This collection of information applies to members of the public who may not be familiar with import procedures and CBP regulations. It may also be used by the importing and trade community who are familiar with import procedures and with the CBP regulations.

Type of Information Collection: CBP Form 4609.

Estimated Number of Respondents: 1,610.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,610.

Estimated Time per Response: 14 minutes.

Estimated Total Annual Burden Hours: 376.

Dated: February 17, 2022.

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

[Published in the Federal Register, February 23, 2022 (85 FR 10222)]

U.S. Court of International Trade

Slip Op. 22–14

TAIZHOU UNITED IMP. & EXP. CO. LTD., Plaintiff, and GUANGZHOU JANGHO CURTAIN WALL SYSTEM ENGINEERING CO., LTD., JANGHO GROUP CO., LTD., BEIJING JIANGHEYUAN HOLDING CO., LTD., BEIJING JANGHO CURTAIN WALL SYSTEM ENGINEERING CO., LTD., JANGHO CURTAIN WALL HONG KONG LTD., SHANGHAI JANGHO CURTAIN WALL SYSTEM ENGINEERING CO., LTD., Consolidated Plaintiffs, v. UNITED STATES, Defendant, and ALUMINUM EXTRUSIONS FAIR TRADE COMMITTEE, Defendant-Intervenor.

Before: Leo M. Gordon, Judge
Consol. Court No. 16–00009

[*Remand Results* sustained.]

Dated: February 18, 2022

Douglas J. Heffner and *Richard P. Ferrin*, Drinker Biddle & Reath LLP of Washington, D.C., for Plaintiff Taizhou United Imp. & Exp. Co. Ltd.

J. Kevin Horgan, *Alexandra H. Salzman*, *Gregory S. Menegaz*, and *John J. Kenkel*, deKieffer & Horgan, PLLC of Washington, D.C., for Consolidated Plaintiffs Guangzhou Jangho Curtain Wall System Engineering Co., Ltd., Jangho Group Co., Ltd., Beijing Jiangheyuan Holding Co., Ltd., Beijing Jangho Curtain Wall System Engineering Co., Ltd., Jangho Curtain Wall Hong Kong Ltd. and Shanghai Jangho Curtain Wall System Engineering Co., Ltd.

Douglas G. Edelschick, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice of Washington, D.C., for Defendant United States. With him on the brief were *Brian M. Boynton*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Reginald T. Blades Jr.*, Assistant Director. Of counsel on the brief was *Kirrin Hough*, Attorney, U.S. Department of Commerce, Office of the Chief Counsel for Trade Enforcement and Compliance of Washington, D.C.

Alan H. Price, *Robert E. DeFrancesco, III*, and *Elizabeth S. Lee*, Wiley Rein LLP of Washington, D.C., for Defendant-Intervenors Aluminum Extrusions Fair Trade Committee.

OPINION

Gordon, Judge:

This action involves the final results of the 2013 administrative review conducted by the U.S. Department of Commerce (“Commerce”) of the countervailing duty (“CVD”) order on aluminum extrusions from the People’s Republic of China. *See Aluminum Extrusions From the People’s Republic of China*, 80 Fed. Reg. 77,325 (Dep’t of Commerce Dec. 14, 2015) (“*Final Results*”), and the accompanying Issues and Decision Memorandum, C-570–968 (Dep’t of Commerce Dec. 7, 2015), available at <https://enforcement.trade.gov/frn/summary/prc/>

2015–31425–1.pdf (“*Decision Memorandum*”); see also *Aluminum Extrusions from the People’s Republic of China*, 76 Fed. Reg. 30,653 (Dep’t of Commerce May 26, 2011) (“*CVD Order*”). Plaintiff Taizhou United Imp. & Exp. Co. Ltd., along with Consolidated Plaintiffs Guangzhou Jangho Curtain Wall System Engineering Co., Ltd., Jangho Group Co., Ltd., Beijing Jiangheyuan Holding Co., Ltd., Beijing Jangho Curtain Wall System Engineering Co., Ltd., Jangho Curtain Wall Hong Kong Ltd. and Shanghai Jangho Curtain Wall System Engineering Co., Ltd. (collectively “Jangho”), challenged various aspects of Commerce’s determinations in the *Final Results*.

The court presumes familiarity with the history of this action. See *Taizhou United Imp. & Exp. Co. v. United States*, 44 CIT ___, 475 F. Supp. 3d 1305 (2020) (“*Taizhou I*”); see also *Remand Results* at 2–5 (explaining history of case); *Shenyang Yuanda Aluminum Eng’g Co. v. United States*, 41 CIT ___, 279 F. Supp. 3d 1209 (2017), *aff’d*, 918 F.3d 1355 (Fed. Cir. 2019) (affirming Commerce’s determination that curtain wall units imported under contract for an entire curtain wall are subject to the *CVD Order*); *Shenyang Yuanda Aluminum Industry Eng’g Co. v. United States*, 38 CIT ___, 961 F. Supp. 2d 1291 (2014), *aff’d*, 776 F.3d 1351, 1358 (Fed. Cir. 2015) (affirming Commerce’s determination that parts of curtain wall units are subject to the *CVD Order*); *Antidumping Duty and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China* (Dep’t of Commerce Mar. 27, 2014) (final scope ruling on curtain wall units produced and imported as part of contract to supply curtain wall), available at <https://enforcement.trade.gov/download/prc-ae/scope/38-curtain-wall-units-7apr14.pdf>. In *Taizhou I*, the court sustained the *Final Results* as to almost all of the issues raised by Plaintiffs; however, the court remanded Commerce’s determinations to countervail subsidized purchases of glass and aluminum extrusions for further explanation and reconsideration. *Id.*

Before the court are Commerce’s Final Results of Redetermination Pursuant to Court Remand, ECF No. 103 (“*Remand Results*”), filed pursuant to *Taizhou I*. On remand, Commerce “continue[d] to find that the provision of glass and aluminum extrusions for less than adequate remuneration (“LTAR”) are countervailable.” See *Remand Results* at 2. Plaintiffs now challenge just Commerce’s determination to continue to countervail subsidized glass purchases for LTAR. See Consolidated Plaintiffs’ Comments on Remand Redetermination, ECF No. 109 (“Jangho Comments”); Plaintiff’s Comments in Opp’n to Remand Results, ECF No. 110 (incorporating Jangho’s Comments by reference); see also Defendant’s Corrected Response to Comments on Remand Redetermination, ECF No. 117 (“Def.’s Resp.”); Defendant-

Intervenor’s Response Comments on Remand Redetermination, ECF No. 114. The court has jurisdiction pursuant to Section 516A(a)(2)(B)(iii) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(a)(2)(B)(iii)¹, and 28 U.S.C. § 1581(c) (2018). For the reasons set forth below, the court sustains the *Remand Results*.

I. Standard of Review

The court sustains Commerce’s “determinations, findings, or conclusions” unless they are “unsupported by substantial evidence on the record, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(B)(i). More specifically, when reviewing agency determinations, findings, or conclusions for substantial evidence, the court assesses whether the agency action is reasonable given the record as a whole. *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1350–51 (Fed. Cir. 2006). Substantial evidence has been described as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *DuPont Teijin Films USA v. United States*, 407 F.3d 1211, 1215 (Fed. Cir. 2005) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). Substantial evidence has also been described as “something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” *Consolo v. Fed. Mar. Comm’n*, 383 U.S. 607, 620 (1966). Fundamentally, though, “substantial evidence” is best understood as a word formula connoting reasonableness review. 3 Charles H. Koch, Jr. *Administrative Law and Practice* § 9.24[1] (3d ed. 2021). Therefore, when addressing a substantial evidence issue raised by a party, the court analyzes whether the challenged agency action “was reasonable given the circumstances presented by the whole record.” 8A *West’s Fed. Forms*, National Courts § 3.6 (5th ed. 2021).

II. Discussion

A subsidy is countervailable if: (1) a government or public authority has provided a financial contribution; (2) a benefit is thereby conferred upon the recipient of the financial contribution; and (3) the subsidy is specific to a foreign enterprise or foreign industry, or a group of such enterprises or industries. 19 U.S.C. § 1677(5). “A benefit shall normally be treated as conferred” to the recipient where goods or services are provided to the foreign manufacturer or producer of

¹ Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2018 edition.

the subject merchandise for LTAR. *See* 19 U.S.C. § 1677(5)(E)(iv); *see also* 19 C.F.R. § 351.511(a)(1). Commerce “normally will consider a benefit to be conferred where a firm pays less for its inputs (e.g., money, a good, or a service) than it otherwise would pay in the absence of the government program or receives more revenues than it otherwise would earn.” *See* 19 C.F.R. § 351.503(b)(1).

A. Glass Inputs

1. Proceedings Below

In the underlying administrative review, Commerce found that “glass is an input used in the manufacture of subject merchandise,” and “accordingly, benefits arising from the provision of glass for LTAR are [countervailable as those benefits are] not tied to non-subject merchandise.” *See Decision Memorandum* at 97–98. Commerce disagreed with Plaintiffs that Commerce’s decision to countervail glass violated language in the *CVD Order* that excluded “non-aluminum extrusion components of subassemblies.” *Id.* Rather, Commerce found that Plaintiffs’ reliance on the exclusionary language was misplaced:

Regardless of the Jangho Companies’ and the GOC’s arguments with respect to that language of the scope, this does not affect our ability to countervail glass for LTAR. As discussed, curtain wall units are subject merchandise and the inputs at issue are used in the production of subject merchandise. Thus, there is no basis to make a finding that the subsidy benefits for glass are tied to non-subject merchandise. In light of the foregoing, we find it is thus appropriate for the Department to continue to countervail the glass for LTAR program.

Id.

In reviewing Commerce’s treatment of glass, the court stated that it could not understand how Commerce could reconcile its conclusion that “a curtain wall unit is subject merchandise, inclusive of aluminum extrusions, glass, and all other components” with the plain language of the *CVD Order*. *See Taizhou I*, 44 CIT at ___, 475 F. Supp. 3d at 1310–11. Commerce’s unclear references to its “tying” practice and how it applied its tying analysis in the underlying administrative review led the court to remand this issue. The court held that “the scope of the order covers aluminum extrusions, not glass, and the *CVD Order* expressly excludes the nonaluminum extrusion components of subassemblies like curtain wall units.” *See Taizhou I*, 44 CIT at ___, 475 F. Supp. 3d at 1311. The court thus concluded that “[i]t is therefore arbitrary to conclude the glass is subject merchandise,” and directed that “Commerce must abide by the clear scope language.” *Id.*

On remand, Plaintiffs again focused on the plain language of the *CVD Order* excluding non-aluminum extrusion inputs, like glass, from the scope of the order, regardless of whether the input is subsidized. Plaintiffs maintained that subsidized purchases of glass should be excluded from Commerce’s benefits analysis and the resulting calculus of the net subsidy rate. Commerce disagreed, stating that its benefits analysis, and thus the net subsidy rate, is to reflect any benefit received on any input obtained for LTAR regardless of what the respondent company does with the subsidy, unless such company demonstrates that the subsidy is not tied to the subject merchandise. *See Remand Results* at 7–11. Commerce further explained that the exclusionary language in the *CVD Order* is given effect when U.S. Customs and Border Protection (“CBP”) assesses respondents’ duty liability “solely on the value of the aluminum extrusion components included in the curtain wall unit, exclusive of the value of the glass and any other non-aluminum extrusion[] components, when the respective values and necessary information are reported to CBP.” *Id.* at 12.

Commerce recognized that the articulation of its rationale in the *Decision Memorandum* may have been “somewhat confusing.” *Id.* at 7 (quoting, with emphasis, *Decision Memorandum* statement that “benefits arising from the provision of glass for LTAR are not tied to non-subject merchandise”). Commerce clarified that its “benefit analysis examines whether *the respondent company* has been provided a subsidy that confers a benefit to the company, not whether the benefit can be shown to flow directly to its production of subject merchandise.” *Id.* at 8. Commerce noted that it is authorized to find a countervailable subsidy from the government provision of any good for LTAR that results in a benefit to the recipient company. *Id.* at 8–9 (quoting, with emphasis, the Preamble to *Countervailing Duties; Final Rule*, 63 Fed. Reg. 65,348 (Dep’t of Commerce Nov. 25, 1998) (“[W]hen we talk about input costs in the context of the definition of benefit, we are not referring to cost of production in a strict accounting sense. *Nor are we referring exclusively to inputs into subject merchandise.* Instead, we intend the term ‘input’ to extend broadly to any input into a firm that produces subject merchandise.”)). Commerce explained that it has relied on this guidance in prior matters where it has found “that inputs obtained for LTAR could be countervailed, even when the inputs were not used in the production of the subject merchandise.” *See Remand Results* at 9 (noting that governing statutes and regulations do not contain limiting language and “do not require that the goods provided for LTAR be used, exclusively or

otherwise, in the production of subject merchandise; they merely refer to those goods that are provided for LTAR to the producer of the subject merchandise”).

Commerce went on to note that its explanation in the *Decision Memorandum* reflected its analysis of whether to apply the exception to not countervail subsidies demonstrably tied to the production or sale of particular non-subject merchandise. *Id.* at 10. It appears that Commerce initially focused on the fact that glass is an input used in the manufacture of subject merchandise and is therefore countervailable because the benefits derived from the purchase of glass for LTAR are intertwined with the subject merchandise. *See Decision Memorandum* at 97–98; *see also* Def.’s Resp. in Opp’n to Pl.’s Mot. for J. on the Agency R. at 23, ECF No. 88 (“Commerce also determined that each curtain wall unit contains glass, and, therefore, glass is an input used in the manufacture of subject merchandise. *Thus, the benefits arising from the provision of glass for less than adequate remuneration are tied to subject merchandise and, thus, are countervailable benefits* under 19 U.S.C. § 1677(5)(E)(iv).” (emphasis added)); *cf. Remand Results* at 7 (“The Court’s concern over our decision to countervail glass for LTAR appears to be based on its understanding that we determined that ‘the benefits derived from the purchase of glass for LTAR are tied to subject merchandise.’ *We made no such determination.* Rather, our decision to countervail the provision of glass for LTAR is in accordance with law and with our practice, which recognizes that the provision of goods for LTAR is not a subsidy that is tied to the production of particular merchandise and, as such, *we find that it is neither tied to the production of subject merchandise nor to the production of non-subject merchandise.* Further, the manner in which our determination of the respondents’ respective net subsidy rates is applied, *i.e.*, when duties are assessed, gives effect to the scope of the *Orders.*” (emphasis added)).

In the remand, Commerce re-examined and reaffirmed its decision to countervail the provision of glass for LTAR, explaining that the “provision of goods for LTAR is not a subsidy that is tied to the production of particular merchandise” and that the provision of glass for LTAR to respondents “is neither tied to the production of subject merchandise nor to the production of non-subject merchandise.” *See Remand Results* at 7. Commerce further noted that its authority to countervail subsidies under 19 U.S.C. § 1677(5)(E)(iv) and 19 C.F.R. § 351.511(a)(1) is not limited to goods that are used in the production of subject merchandise or are themselves subject merchandise. *See id.* at 8 (explaining that relevant statutory and regulatory provisions enable Commerce to countervail “goods and services” provided for

LTAR, and that “[t]he use of the general term ‘good’ without any modifier indicates that Commerce may consider a broad scope of goods, and not just inputs into the production of subject merchandise or inputs that are themselves subject merchandise”).

Commerce explained that it generally countervails all or most goods provided at LTAR, unless a respondent can show that the good was “tied” to non-subject merchandise, meaning that the subsidized good was purchased with an intent for its dedicated use in the production of non-subject merchandise. *See Remand Results* at 10–11 (“Under its longstanding ‘tying’ methodology, Commerce may find that a subsidy is tied to a particular product, or other subset of the company’s operations, where there is clear and robust information showing the subsidy was in fact tied at the point of bestowal; otherwise, the subsidy is “untied” and benefits the company’s overall operations.”); *id.* at 18 (“Absent substantive evidence of ‘tying,’ Commerce’s practice has been to treat the subsidy as ‘untied’ and attribute the subsidy to the company’s overall production pursuant to subsection 351.525(b)(3).”). Here, Commerce found that the record did not establish that the subsidized glass purchases were “tied” to non-subject merchandise, and consequently included the glass purchased for LTAR in its subsidy analysis. *See id.* at 11, 21 (“In the instant review, the record contained no evidence, at the time of the bestowal of the glass, *i.e.*, a point prior to or concurrent with the provision of the glass, that established an intentional restriction of the subsidy to non-subject merchandise.”).

2. Analysis

Plaintiffs argue that Commerce based its determination on a finding that glass was an input for subject merchandise and not whether the benefit was tied to non-subject merchandise. *See Jangho Comments* at 6 (“The Department did not base its determination on a finding that the benefits were not tied to non-subject merchandise, *i.e.*, glass. The Department based its determination on a finding that glass was an input for subject merchandise.”). Plaintiffs further maintain that the record demonstrates that the subsidized glass was “tied to non-subject merchandise.” *Id.* at 7. Plaintiffs therefore conclude that “the facts of this case and Court’s [decision in *Taizhou I*] require the Department to treat glass subsidies as tied to non-subject merchandise.” *See id.* at 9. The court does not agree.

Plaintiffs’ initial argument consists largely of conclusory statements. *See id.* at 7 (“There is also no reasonable basis in the record for concluding that the subsidies bestowed by the provision of glass at LTAR are not tied to non-subject merchandise. The Department now

apparently agrees that glass is not an input for aluminum extrusions. Thus, LTAR glass purchases are not tied to the production of aluminum extrusions.”). The consequence is that Plaintiffs have failed to engage with Commerce’s clarification of its analysis and further explanation set forth in the *Remand Results*. Commerce explained that the relevant regulatory and statutory provisions—19 U.S.C. §§ 1677(5) & (5A), as well as 19 C.F.R. §§ 351.503 & 351.511—allow Commerce to countervail goods provided to respondents at LTAR, and that these provisions “do not require that the goods provided for LTAR be used, exclusively or otherwise, in the production of subject merchandise.” *Remand Results* at 9. Commerce noted that limiting its authority to countervail subsidies to only direct inputs of subject merchandise, as urged by Plaintiffs, “would create a loophole that would undermine the intent of the countervailing duty law by preventing Commerce from addressing the injury resulting from the provision of subsidies by foreign governments via goods that benefit the general operation of a producer.” *Id.* at 10. Commerce further explained that it has consistently countervailed the provision for LTAR of goods, concluding that “inputs obtained for LTAR could be countervailed, even when the inputs were not used in the production of the subject merchandise.” *Id.* at 9 (citing *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China*, 74 Fed. Reg. 4,936 (Dep’t of Commerce Jan. 28, 2009) (final affirm. CVD determ.), and accompanying Issues and Decision Memorandum at 18).

Additionally, Plaintiffs’ argument that there is no reasonable basis in the record to conclude that the subsidized glass purchases are *not* tied to non-subject merchandise flips the burden of proof. It is Plaintiffs’ obligation to put information on the record that would provide a basis for Commerce to reach Plaintiffs’ desired conclusion, namely that the subsidized glass purchases were dedicated to use in the production of “non-subject merchandise” leading Commerce to exclude those subsidies from its benefits analysis. *See Tianjin Wanhua Co. v. United States*, 40 CIT ___, ___, 179 F. Supp. 3d 1062, 1071 (2016) (noting that plaintiff must demonstrate that its preferred evidentiary finding is “the one and only reasonable” outcome on the administrative record, “not simply that [its preferred finding] may have constituted another possible reasonable choice”).

As noted above, Plaintiffs point to nothing in the record demonstrating that their subsidized glass purchases were tied to non-subject merchandise. Plaintiffs do not identify any non-subject merchandise to which the glass may have been “tied.” *See* Jangho Comments at 5 (arguing that benefit of “LTAR glass purchases” was

“tied to non-subject merchandise, *i.e.*, glass”). Commerce found that Jangho’s purchases of glass for LTAR were not designated for a certain subset of its production (*i.e.*, non-subject merchandise) when it purchased the glass. *See Remand Results* at 22 (“Jangho also argues that its subsidies based on purchases of glass for LTAR were directly tied to sales of glass by Jangho. However, as Jangho states, it sold curtain wall units, which are subject to the *CVD Order* on aluminum extrusions, and which included glass as a component; Jangho did not sell glass itself. Even so, we find no merit in Jangho’s attempt to claim its glass for LTAR subsidies were tied to particular sales. Commerce makes determinations regarding the tying of subsidies based on record evidence showing the express intent for the use of the subsidy in a specified subset of a company’s *production*, and the record of this proceeding includes no evidence establishing that Jangho’s purchases of glass for LTAR were designated for a certain subset of its production when it purchased the glass.”). After assessing the record as a whole, Commerce determined that Plaintiffs failed to establish tying of the subsidy to non-subject merchandise, and therefore reaffirmed its determination to countervail respondents’ purchases of glass for LTAR. *See Remand Results* at 11. Given this, the court concludes that Commerce’s analysis and determination are reasonable.

Next, the court turns to Plaintiffs’ contention that the *Remand Results* do not comply with *Taizhou I*, which directed Commerce to “give effect to the Order’s language excluding ‘non-aluminum extrusion components of subassemblies’ from the scope of the order.” *See Jangho Comments* at 3; *see also id.* at 9 (arguing that “the facts of this case and Court’s original judgment require the Department to treat glass subsidies as tied to non-subject merchandise”). Plaintiffs’ arguments ignore the fact that the standard for the court’s review is whether Commerce’s decision-making is reasonable given the circumstances provided by the record as a whole, not whether the agency “complied with the court’s order.” *See* 19 U.S.C. § 1516a(b)(1)(B)(i). Commerce’s initial explanation concluded that “a curtain wall unit is subject merchandise, inclusive of aluminum extrusions, glass, and all other components.” *See Decision Memorandum* at 100. Based on that, Commerce determined that glass is a subsidized input included in a curtain wall unit that is subject merchandise under the *CVD Order*. *Id.* at 98. As stated previously, the court could not understand how Commerce’s limited analysis and explanation in the *Decision Memorandum*, and as defended in Defendant’s Response in Opposition to Plaintiff’s Motion for Judgment on the Agency Record, ECF No. 88, did not contravene the plain language of the *CVD Order*. *See supra* at

pp. 6–9; *Taizhou I*, 44 CIT at ___, 475 F. Supp. 3d at 1311. Accordingly, the court directed Commerce to “give effect to the *CVD Order*’s language excluding non-aluminum extrusion components of subassemblies from the scope of the order.” *Id.*

Although the court “remand[ed] this issue for Commerce to correct its analysis of the non-aluminum extrusion components of the curtain wall units,” *see id.*, Plaintiffs’ challenge to the *Remand Results* focuses solely on a narrow reading of the language in the court’s remand order rather than the substance of the *Remand Results*. Plaintiffs contend that Commerce’s “remand results clearly do not comply” with the court’s remand order and the further explanation “does not give effect to clear scope of language of the *CVD Order*.” *See* Jangho Comments at 3. On remand, however, Commerce provided a more thorough explanation as to how and why its decision to countervail subsidized glass was in accordance with the statutory scheme and did not violate the language of the *CVD Order*. *See Remand Results* at 7–12 (“even though Commerce’s subsidy analysis includes benefits received through the provision of glass for LTAR, the calculation by U.S. Customs and Border Protection (CBP) of the respondents’ duty liability is based solely on the entered value of the aluminum extrusions subject to the *Orders*. Therefore, the liability is calculated based solely on the value of the aluminum extrusion components included in the curtain wall unit, exclusive of the value of the glass and any other non-aluminum extrusion[] components, when the respective values and necessary information are reported to CBP.”).

Alternatively, Plaintiffs argue that even if the court reaches the merits of Commerce’s remand redetermination, the court should reject the agency or counsel’s attempt to substitute a *post hoc* rationalization of its determination for its actual determination. *See* Jangho Comments at 4. “The courts may not accept counsel’s *post hoc* rationalizations for agency action ... it is well-established that an agency’s action must be upheld, if at all, on the basis articulated by the agency itself.” *See SEC v. Chenery*, 332 U.S. 194, 196 (1947). There is a difference between a *post hoc* rationalization and clarification of the reasoning underlying Commerce’s decision-making. Here, Commerce, not its U.S. Department of Justice counsel, clarified and further explained on remand the rationale underlying its original (and continued) determination without resorting to novel arguments or legal interpretations. Therefore, the court does not agree that the *Remand Results* reflect an impermissible *post hoc* rationalization of Commerce’s initial determinations.

Plaintiffs also contend that the subsidy for glass is “obviously tied to non-subject merchandise” but offer no support for this “obvious” con-

tention. *See* Jangho Comments at 7. Plaintiffs’ comments suggest that Commerce should examine the use and effect of a subsidy to determine whether the subsidy is tied to subject merchandise. *See id.* at 8 (noting that “the record shows that the purpose of the subsidies was to promote the Chinese glass industry” and contending that “[a]ny benefit to glass purchasers was incidental to the purpose of the subsidies.”). Commerce refused to conduct such an examination, explaining that “Commerce has a well-established practice of not considering the use and effect of subsidies.” *Remand Results* at 9, 11 (citing *Certain Steel Nails from the Sultanate of Oman*, 80 Fed. Reg. 28,958 (Dep’t of Commerce May 20, 2015) (final negative CVD determ.), and accompanying Issues & Decision Memorandum at 15). Plaintiffs offer nothing to demonstrate that Commerce’s practice is unreasonable. *See generally* Jangho Comments.

Commerce likewise rejected Jangho’s argument that “the provision of glass for LTAR subsidies are, ‘by their very nature,’ tied to glass at the point of bestowal.” *Remand Results* at 21. As Commerce explained, “to the extent Jangho is arguing that the subsidy is tied to non-subject merchandise based simply on the input for which the subsidy is provided (*i.e.*, glass), Jangho misunderstands Commerce’s regulations and practice regarding the tying of subsidies. Commerce makes determinations regarding the tying of subsidies based on record evidence showing the express intent for the use of the subsidy in a specified subset of a company’s production, not based on what Jangho refers to as the ‘very nature’ of the subsidy.” *See id.* at 21 (internal citations omitted). Commerce found that “there is no information on the record, such as an executed contract or an agreement with express language, establishing that Jangho’s purchases of glass for LTAR were designated for a certain subset of its production when it purchased the glass.” *Id.* Accordingly, the court sustains as reasonable both Commerce’s finding that the glass subsidies at issue were not “tied” to non-subject merchandise, as well as Commerce’s determination to continue to account for glass subsidies in the net subsidy rate.

B. Aluminum Extrusions Inputs

Plaintiffs’ initially challenged Commerce’s determination to countervail subsidies to aluminum extrusion inputs to the subject merchandise. This issue was also remanded to Commerce. *See Taizhou I*, 44 CIT at ___, 475 F. Supp. 3d at 1311. On remand, Commerce continued to find that the provision of aluminum extrusions inputs for LTAR constituted countervailable subsidies to the production of subject merchandise. *See Remand Results* at 12–15, 24. Plaintiffs did

not submit comments on the *Remand Results* with respect to this issue. Since Plaintiffs no longer challenge this issue, the court sustains Commerce's finding.

III. Conclusion

Given the circumstances presented, including the long history of the application of the aluminum extrusion orders to curtain walls and curtain wall units, the court concludes that Commerce's analysis and determination are reasonable. Accordingly, the court sustains Commerce's *Remand Results*. Judgment will enter accordingly.

Dated: February 18, 2022

New York, New York

/s/ Leo M. Gordon
JUDGE LEO M. GORDON

Slip Op. 22–15

AMCOR FLEXIBLES KREUZLINGEN AG, Plaintiff, v. UNITED STATES,
Defendant.

Before: Gary S. Katzmman, Judge
Court No. 16–00193

[The court grants Plaintiff's motion for summary judgment.]

Dated: February 22, 2022

Wm. Randolph Rucker, Faegre Drinker, Biddle & Reath LLP, of Chicago, IL, argued for Plaintiff Amcor Flexibles Kreuzlingen AG.

Edward F. Kenny, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, N.Y., argued for Defendant United States. With him on the brief were *Brian M. Boynton*, Acting Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Justin R. Miller*, Attorney-in-Charge. Of counsel on the brief was *Paula S. Smith*, Office of Assistant Chief Counsel, U.S. International Trade Litigation, U.S. Customs and Protection, of New York, N.Y.

OPINION

Katzmann, Judge:

This case involves the tariff classification of Formpack, a flexible packaging material imported by Plaintiff, Amcor Flexibles Kreuzlingen AG (“Amcor”), and ultimately intended for use in pharmaceutical product and medical device packaging. Formpack consists of thin, soft-tempered aluminum foil with a heat-sealable coating on one side and plastic film lamination featuring product, brand, weight and usage instructions on the reverse. It was classified by U.S. Customs and Border Protection (“CBP”) under Subheading 7607.20.10 of the

Harmonized Tariff Schedule of the United States (“HTSUS”)¹ as backed aluminum foil “covered or decorated with a character, design, fancy effect or pattern.” Amcor now seeks review of CBP’s classification decision, and argues that Formpack is properly classified under Subheading 4911.99.80 as “other printed matter, including printed pictures and photographs” or alternatively under Subheading 7607.20.50 as “other” backed aluminum foil. Mem. of Law in Supp. of Pl.’s Mot. for Summ. J. at 2–3, Jan. 4, 2021, ECF No. 56 (“Pl.’s Br.”). The Government opposes Plaintiff’s motion and argues that the printed Formpack was properly classified by CBP. Def.’s Mem. in Opp’n to Pl.’s Mot. for Summ. J. and in Supp. of Def.’s Cross-Mot. for Summ. J. at 1, Apr. 1, 2021, ECF No. 63 (“Def.’s Br.”). The court concludes that Formpack is properly classified within Subheading 7607.20.50 as “other” backed aluminum foil, and accordingly grants Plaintiff’s motion for summary judgment and denies the Government’s cross-motion.

BACKGROUND

I. Legal and Regulatory Framework for Customs Classification

Merchandise imported into the United States is classified under the HTSUS, which sets out the tariff rates and statistical categories using a series of nested chapters, headings, and subheadings. In general, the HTSUS’s primary headings describe broad categories of merchandise, while its subheadings provide a particularized division of the goods within each category. Proper classification is governed by the General Rules of Interpretation (“GRIs”) of the HTSUS as well as the Additional U.S. Rules of Interpretation. *See Roche Vitamins, Inc. v. United States*, 772 F.3d 728, 730 (Fed. Cir. 2014) (citing *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1439 (Fed. Cir. 1998)).

Goods imported into the customs territory of the U.S. must first be “entered,” or in other words declared to CBP. *What Every Member of the Trade Community Should Know About: Tariff Classification* 8, U.S. Customs and Border Protection (May 2014) https://www.cbp.gov/sites/default/files/documents/icp017r2_3.pdf (last visited February 18, 2022). At entry, the importer is obliged to use “reasonable care” to propose an accurate classification and valuation of the goods. *Id.* CBP is then responsible for determining the final classification and valuation of the goods through a process called “liquidation of the entry.”

¹ References to “Chapter,” “Heading” or “Subheading” herein refer to the HTSUS.

Id. After liquidation of the entry, an importer may seek administrative review of a classification decision by protesting the decision to CBP, which results in an internal review of the decision by a higher level of authority. *Id.* at 39. If the importer is unsatisfied with the decision resulting from its protest, it may then, as here, seek judicial review. *Id.*

Judicial review of classification decisions involves two steps. First, the court determines the proper meaning of the terms used in the HTSUS provision, which is a question of law. *See Link Snacks, Inc. v. United States*, 742 F.3d 962, 965 (Fed. Cir. 2014) (citing *Warner-Lambert Co. v. United States*, 407 F.3d 1207, 1209 (Fed. Cir. 2005)). Second, the court determines whether the subject merchandise falls within the description of those terms, which is a question of fact. *Id.* (citing *Orlando Food Corp.*, 140 F.3d at 1439). Where, as here, there is no dispute regarding the nature of the merchandise, “the two-step classification analysis ‘collapses entirely into a question of law.’” *Id.* at 965–66 (quoting *Cummins Inc. v. United States*, 454 F.3d 1361, 1363 (Fed. Cir. 2006)). In reviewing a classification decision, the court must “consider whether the government’s classification is correct, both independently and in comparison with the importer’s alternative.” *Jarvis Clark Co. v. United States*, 733 F.2d 873, 878 (Fed. Cir. 1984).

To determine the meaning of an HTSUS provision, the court applies the GRIs in numerical order, beginning with GRI 1 and reaching subsequent GRIs if analysis under the preceding GRI does not yield proper classification of the subject merchandise. *See Link Snacks, Inc.*, 742 F.3d at 965; *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999). “The HTSUS is designed so that most classification questions can be answered by GRI 1.” *Telebrands Corp. v. United States*, 36 CIT 1231, 1235, 865 F. Supp. 2d 1277, 1280 (2012), *aff’d* 522 Fed. Appx. 915 (Fed. Cir. 2013). Under GRI 1, “classification shall be determined according to the terms of the headings and any relative section or chapter notes.” GRI 1. Therefore, “a court first construes the language of the heading, and any section or chapter notes in question.” *Orlando Food Corp.*, 140 F.3d at 1440.

In practice, the terms employed by the HTSUS are “construed according to their common and commercial meanings, which are presumed to be the same.” *Carl Zeiss, Inc.*, 195 F.3d at 1379 (citing *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). The court therefore defines HTSUS terms by relying on its own understanding and, if necessary, by “consult[ing] lexicographic and scientific authorities, dictionaries, and other reliable information

sources.” *Id.* at 1379 (citation omitted). If more information is needed, the court may also consult the Harmonized Commodity Description and Coding System’s Explanatory Notes (“Explanatory Notes” or “ENs”). See *StoreWALL, LLC v. United States*, 644 F.3d 1358, 1362–63 (Fed. Cir. 2011). Although the “Explanatory Notes are not legally binding, [they] may be consulted for guidance and are generally indicative of the proper interpretation of a tariff provision.” *Roche Vitamins, Inc.*, 772 F.3d at 731 (citing *Motorola, Inc. v. United States*, 463 F.3d 1357, 1362 (Fed. Cir. 2006)).

II. Factual and Procedural History

The merchandise at issue here entered the United States from June 2011 to December 2013 and was liquidated as entered from April 2012 to October 2014 under Subheading 3921.90.40. Def.’s Br. at Ex. 1. Between August 2012 and February 2015, Plaintiff timely filed seven protests challenging this classification and arguing that Formpack should instead be classified as “backed foil” under Subheading 7607.20.50. Am. Compl. ¶ 4, ECF No. 34, July 9, 2019; Am. Ans. ¶ 4, ECF No. 35, July 23, 2019. After the decision of the Court of Appeals for the Federal Circuit in *Alcan Food Packaging v. United States*, 771 F.3d 1364 (Fed. Cir. 2014), upholding the CIT’s ruling that flexible food packaging materials consisting of aluminum foil sandwiched between either three or four layers of plastic were properly classified as plastics under Subheading 3921.90.40, Plaintiff submitted additional letters to CBP arguing that Formpack was distinguishable from the packaging materials in *Alcan Food Packaging. Id.*; Def.’s Br. at 3, Ex. 1; see also *Alcan Food Packaging*, 771 F.3d at 1364. However, in April 2016, CBP denied Amcor’s protests on the basis of the Federal Circuit’s decision. Def.’s Br. at 3.

On September 27, 2016, Plaintiff commenced this suit to challenge the denial of its protests. Summons, ECF No. 1. After learning during discovery that the Formpack at issue consisted of foil with a layer of plastic film printed using a rotogravure machine, CBP revised its classification to Subheading 7607.20.10, which encompasses backed aluminum foil, “whether or not printed,” and “covered or decorated with a character, design, fancy effect or pattern.” Def.’s Br. at 3–4. Plaintiff again disagreed, and following this court’s decision in *Aero Rubber Company, Inc. v. United States*, 43 CIT __, 389 F. Supp. 3d 1296 (2019) in May 2019 — which classified silicone bands printed with text as “printed matter” rather than “articles of plastic” — amended its complaint to include a claim for classification as “other printed matter” under Subheading 4911.99.80. Am. Compl. at 3–4. On January 4, 2021, Plaintiff filed its motion for summary judgment. Pl.’s

Br. The Government filed its cross-motion for summary judgment on April 1, 2021. Def.'s Br. Plaintiff responded in opposition to the Government's cross-motion on June 7, 2021, and the Government replied on July 12, 2021. Pl.'s Resp. to Mot. for Summ. J., ECF No. 68 ("Pl.'s Resp."); Def.'s Reply Mem. in Further Supp. of Def.'s Cross-Mot. for Summ. J., ECF No. 71 ("Def.'s Reply"). On November 1, 2021, the court issued a letter providing questions for oral argument. Ct.'s Letter re Questions for Oral Arg., ECF No. 75. The parties filed responses on November 12, 2021 in anticipation of argument. Def.'s Resp. to the Ct.'s Written Qs. Directed to the Gov't for Oral Arg., ECF No. 76; Pl.'s Resp. to the Ct.'s Qs. for Oral Arg. Directed to Amcor Flexibles Kreuzlingen AG, ECF No. 77. Oral argument was held on November 15, 2021, and the parties filed supplemental post-argument submissions thereafter. Oral Arg., ECF No. 79; Pl.'s Post-Arg. Submission, Nov. 19, 2021, ECF No. 80; Def.'s Post-Hearing Submission, Nov. 19, 2021, ECF No. 81. The parties now request that the court find as a matter of law that Formpack falls within their assessed classification.

JURISDICTION AND STANDARD OF REVIEW

This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1581(a), which provides that the court "shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930." The court reviews classification decisions de novo, 28 U.S.C. § 2640(a)(1), and will grant summary judgment when "the movant shows that there is no genuine dispute as to any material fact [such that] the movant is entitled to judgment as a matter of law," USCIT R. 56(a). To raise a genuine issue of material fact, a party cannot rest upon mere allegations or denials and must point to sufficient evidence for the claimed factual dispute so as to require resolution at trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986).

DISCUSSION

Plaintiff contends that: (i) pursuant to GRI 1, Formpack is properly classified as "other printed matter" under Subheading 4911.88.80; and in the alternative, (ii) if this court finds that the merchandise falls under Heading 7607, it should be classified within Subheading 7607.20.50 as "other" backed aluminum foil. By contrast, the Government argues that Formpack should be classified within Subheading

7607.20.10 as backed aluminum foil that is “[c]overed or decorated with a character, design, fancy effect or pattern.”²

For the reasons stated below, the court concludes that Formpack is properly classified under Subheading 7607.20.50. Accordingly, the court grants Plaintiff’s motion for summary judgment and denies the Government’s cross-motion.

I. Formpack is Properly Classified Under Heading 7607, and Not Heading 4911.

Plaintiff argues, citing *Aero Rubber*, that Formpack is properly classified under Heading 4911 because it features printing that is indispensable to its use, and its communicative purpose therefore predominates over its function as packaging materials. Pl.’s Br. at 24–28. Plaintiff further argues both that the Formpack has been “transformed” through printing from backed foil into printed matter, Pl.’s Resp. at 9–11, and that the Formpack materials are properly considered aluminum foil labels such that they would be excluded from Heading 7607, Pl.’s Br. at 30. The Government responds that while Formpack is printed, the “essence of the Formpack products at issue is the laminated aluminum foil which provides the environmental barrier that holds, protects and extends the shelf-life of the enclosed drug or diagnostic device.” Def.’s Br. at 21. The court concludes that the printing on the Formpack materials at issue neither defines its essential nature and use, nor excludes it from classification as backed aluminum foil, and that printed Formpack is therefore properly classified under Heading 7607.

The court’s previous decision in *Ancor Flexibles Singen GmbH v. United States*, 44 CIT __, 425 F. Supp. 3d 1287 (2020) (“*Ancor Singen*”) is instructive. In *Ancor Singen*, the court considered a challenge to CBP’s classification of a flexible aluminum foil packaging material — in fact, another type of Formpack, albeit not printed — and determined that it was properly classified under Heading 7607. *Id.* at 1301, 1306. The question before the court is therefore whether the printing of product, brand, weight and usage instructions on the Formpack materials transforms merchandise otherwise classifiable as packaging material under Heading 7607 into “printed matter” within the ambit of Heading 4911. For the following reasons, it does not.

First, the law does not require classification under Heading 4911. Plaintiff’s position that “whether or not printed” refers only to printing that is incidental to the use of the good relies on a misapplication

² As neither party currently supports classification under Heading 3921, under which the goods were entered, the court does not consider this classification further.

of the court's decision in *Aero Rubber*. See Pl.'s Br. at 21; *Aero Rubber*, 389 F. Supp. 3d at 1302–03.³ In *Aero Rubber*, the court found that silicon bands that bore a company's name and logo served a communicative purpose sufficient to bring them under Heading 4911. *Id.* at 1307–10. Plaintiff argues by analogy that its flexible packaging materials — although used to package goods — are also used to communicate critical information about the products contained in the package, and therefore likewise fall within the ambit of Heading 4911. Pl.'s Br. at 27; Pl.'s Resp. at 40. In so doing, Plaintiff argues that, under *Aero Rubber*, the test for determining whether the subject packaging materials are “printed matter” is simply whether the printing is “merely incidental to the primary use of the goods.” Pl.'s Resp. at 10 (citing *Aero Rubber*, 389 F. Supp. 3d at 1303). Plaintiff is incorrect. The “merely incidental” standard is not applicable to the Formpack material at issue here because it is drawn from a section note that applied only to a particular subset of goods; namely, “plastics, rubber and articles thereof.” *Aero Rubber*, 389 F. Supp. 3d at 1303. Accordingly, *Aero Rubber*'s classification of printed plastic articles does not suggest that *any* article with printing “not merely incidental” to its primary use must be classified as “printed matter” under Heading 4911 — merely that plastic and rubber articles with non-incidental printing constitute printed matter. Plaintiff's foil packaging materials are therefore not implicated.

Second, the Chapter 76, Note 1(d) priority rule does not prevent classification under Heading 7607. In relevant part, this rule states that:

Headings 7606 and 7607 apply, inter alia, to plates, sheets, strip and foil with patterns (for example, grooves, ribs, checkers, tears, buttons, lozenges) and to such products which have been perforated, corrugated, polished or coated, provided that they do not thereby assume the character of articles or products of other headings.

Alcan Food Packaging, 771 F.3d at 1368. Plaintiff contends, relying on *Alcan Food Packaging*, that because the Formpack materials otherwise classifiable under Heading 7607 have undergone further processing causing them to “assume the character of articles or products of other headings” — i.e., of printed matter — Note 1(d)'s priority rule requires that they be classified *as* printed matter under Heading 4911. Pl.'s Resp. Br. at 12–13. Plaintiff is incorrect. In this case, unlike

³ This is not to say that printing could never render aluminum foil properly classifiable under Heading 4911 — simply that such printing would be subject to a different standard than that set forth in Note 2 to Section VII.

Alcan Food Packaging, the printing has not caused the flexible packaging materials to assume the character of Heading 4911's printed matter. As the court has previously noted, to take on some characteristics or properties of another heading is not to "assume the character" of that heading in such a way as would trigger the priority rule. *Amcor Singen*, 425 F. Supp. 3d at 1301. The court therefore concludes that for Formpack to "assume the character" of printed matter, the process of printing information on the backed aluminum foil would have to alter the product so significantly that the printed component "subsume[s] the foil -- to the point where the good could no longer be described as foil." *Id.* That is not the case here.⁴

Finally, the Formpack materials before the court are not, as Plaintiff argues, "printed aluminum foil labels" such that they are excluded from Heading 7607 and properly classified under Heading 4911. Pl.'s Br. at 30. The ENs to Heading 7607 state that the heading does not cover "printed aluminum foil labels being identifiable individual articles by virtue of the printing." EN 76.07(c); Pl.'s Br. at 17, Ex. 22. A "label" is, according to Merriam Webster, "a slip (as of paper or cloth) inscribed and affixed to something for identification or description." *Label*, Merriam Webster, <https://www.merriam-webster.com/dictionary/label> (last visited Feb. 18, 2022). A label does not ordinarily contain the item it identifies, but rather is affixed, applied, or otherwise attached to the item to "identif[y] or descri[be] it." *Id.* While the Formpack materials are printed and constructed of aluminum foil, they are not affixed to the items they identify or describe. *See* Pl.'s Br. at 4–5. Rather, they are rolls of printed foil "used to package pharmaceutical products" ranging from pills to medical devices, and therefore surround and contain the identified products. *Id.* at 4. Accordingly, given the ordinary meaning of "label," this argument, too, is rejected.

The court finds persuasive the reasoning set out in *Amcor Singen*, and concludes that the printed Formpack at issue is properly classified under Heading 7606. Considering the "essential nature" of the

⁴ The Government also argues that Note 1(d) does not apply because "perforated, corrugated, polished or coated" is a finite list of processes, which does not include printing. Def.'s Br. at 25. While Amcor counters by pointing out that the Flexalcon at issue in *Alcan Food Packaging* did not fit within one of these enumerated processes and yet Note 1(d)'s priority rule still applied, Pl.'s Resp. at 14, the Government responds that a foil product laminated with plastic — like the product at issue in *Alcan Food Packaging* — is "coated" such that Note 1(d)'s priority rule was applicable. Def.'s Reply at 7–8. Plaintiff further responds by pointing to the Chapter 72 General ENs to support the proposition that "coating" could also encompass "surface printing." Pl.'s Resp. at 14. Ultimately, because the court finds that the subject merchandise does not "assume the character" of printed matter, this line of argument is not persuasive.

non-printed Formpack under GRI 3(b), the *Ancor Singen* court found that the aluminum foil portion of Formpack “imparts a defining characteristic that is fundamental to its commercial identity.” 425 F. Supp. 3d at 1305 (citing *Swimways Corp. v. United States*, 42 CIT ___, ___, 329 F. Supp. 3d 1313, 1323 (2018)). The court there went on to state that the “ability [of the Formpack] to isolate the contents of the blister package from its external environment is the precise feature that is sought by customers when selecting blister package material.” *Id.* Even though Formpack’s plastic backing “impart[ed] critical functions” to the foil, the *Ancor Singen* court concluded that the flexible aluminum foil was ultimately more fundamental, and more essential, to the packaging material because it was the foil which ultimately provided the impermeable barrier required in pharmaceutical packaging. *Id.* at 1305–06. Here again, even though the court acknowledges that “Ancor’s customers could not use [Formpack] without the printing” and that “[i]f the printing were wrong or damaged, Ancor’s customers would reject the product,” the court finds that the essential function of Formpack is to provide an impermeable protective barrier for the packaging of pharmaceutical products, not to label those products. Pl.’s Br. at 6. Although Formpack’s plastic coating and specific printing are no doubt required by Plaintiff’s customers, they do not change the essential nature of the merchandise such that printed Formpack no longer constitutes backed aluminum foil subject to Heading 7607.

II. Formpack is properly classified under Subheading 7607.20.50.

Having found that Formpack is properly classified under Heading 7607, the court next considers which subheading within 7607 is appropriate. Anticipating that its argument for classification under Heading 4911 might be rejected, Plaintiff argues in the alternative that its flexible packaging materials should be classified as “other” backed aluminum foil under Subheading 7607.20.50, which encompasses:

7607	Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:
7607.20	Backed:
7607.20.50	Other free

Pl.’s Br. at 3. Subheading 7607.20.50 is a “basket” or residual provision, meaning it is “intended as a broad catch-all to encompass the classification of articles for which there is no more specifically appli-

cable subheading.” *EM Indus., Inc. v. United States*, 22 CIT 156, 165, 999 F.Supp. 1473, 1480 (1998). The Government, on the other hand, argues for a such a specific subheading — Subheading 7607.20.10 — which encompasses:

7607	Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:
7607.20	Backed:
7607.20.10	Covered or decorated with a character, design, fancy effect or pattern..... 3.7%

Def.’s Br. at 15.

As no other specific subheadings exist under the broader “backed aluminum foil” subheading of 7607.20, the question before the court is whether the flexible packaging materials at issue are “covered or decorated with a character, design, fancy effect or pattern.” If so, Subheading 7607.20.10 is the correct classification; if not, the merchandise falls by default into Subheading 7607.20.50. Because the key terms of 7607.20.10 are not defined in the HTSUS or the ENs, the court must define the terms for itself. To define HTSUS tariff terms, the court relies on its own understanding of the terms and may also “consult lexicographic and scientific authorities, dictionaries, and other reliable information sources.” *Carl Zeiss, Inc.*, 195 F.3d at 1379.

Plaintiff and its expert witness argue persuasively that in light of 7607.20.10’s language and the relevant chapter and heading notes, the subheading is meant to include only printing that is decorative in nature, and not communicative text. Pl.’s Br. at 32–38, Ex. 8:57–52; Pl.’s Resp. at 24–25. Whether or not the products are “covered” by printing, the printed component cannot be described as “a character, design, fancy effect or pattern” as contemplated by Subheading 7607.20.10.⁵ For this reason, the court concludes that Formpack is properly classified under Subheading 7607.20.50.

In so doing, the court rejects the Government’s contention that the printing on the Formpack at issue represents a repeating “design” or “pattern” that “covers” or “decorates” the products. Def.’s Resp. at 14. First, that printing may reflect “an underlying scheme” is not sufficient to render it a design or pattern. Def.’s

⁵ The court finds it self-evident that the products are not “decorated” because their printed component is intended to convey essential information, not to ornament the foil. *Decorated*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/decorated> (last accessed February 18, 2022); see Pl.’s Br. at 34–36. The court is less convinced that “covered” means “totally covered by ink with no nonimage space,” as Plaintiff and its expert witness allege. See *id.* at 33–34 (citing Ex. 11:20). Nevertheless, as Plaintiff succeeds on the former argument, the latter need not be addressed at this time.

Br. at 32 (quoting *Design*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/design> (last accessed February 18, 2022)). Any printed material must be designed before it is printed; however, having been designed is not the same as being “a design,” as contemplated by the subheading.

Second, the example patterns enumerated by Note 1(d) to Chapter 76 — specifically, “grooves, ribs, checkers, tears, buttons, lozenges” — each involve repeating geometric or abstract designs that are decorative in nature, and bear little similarity to repeating blocks of informative text. Note 1(d) to Chapter 76. Indeed, the note goes on to separately address foil with functional alterations, such as perforations, which might conceivably repeat across a foil sheet but are nevertheless not listed as patterns. *Id.* Thus, although the Government maintains that the repetition of product information across the uncut roll on which the packaging materials are printed and imported represents a pattern, Def.’s Resp. at 14, the court agrees with Plaintiff that “pattern” and “design,” as contemplated by Subheading 7607.20.10 do not encompass such labeling information, *see* Pl.’s Br. at 38. The information printed on the subject merchandise is repeated to facilitate efficient production, and not to create a design or pattern. *Id.* Indeed, as Plaintiff notes, the Formpack is intended specifically to be cut into “individual packages such that each package conveys the printed information,” rather than used in such a way that the printed information is repeated more than once. Pl.’s Br. at 4.

Third, the court is not persuaded that the Formpack at issue is “covered” with a “character” or “characters” simply because the repeating blocks of informative text themselves consist of “printed or written letters or symbols.” Def.’s Resp. at 13. While, as a general interpretive principle, words in the singular should be read to encompass the plural, this is not the case where “context indicates otherwise.” *Niz-Chavez v. Garland*, 141 S.Ct. 1474, 1482 (2021). The context does so here. Not only do the example patterns listed in Note 1(d) suggest that “pattern” is intended to refer to decorative patterns in the chapter broadly, but the other categories provided in Subheading 7607.20.10 — design, fancy effect or pattern — are decorative rather than functional in nature. Reading “character” to refer to a single, repeating, decorative character, and not to a series of characters comprising informative text, is therefore strongly suggested by the context of the provision and the chapter as a whole.

Finally, the “whether or not printed” language in the main heading is significant. The fact that this phrase appears in the main heading, while the word “printed” does not appear anywhere in Subheading 7607.20.10, suggests that some but not all printed foil falls within

this subheading. As the Government notes, printed foil could avoid classification under 7607.20.10 by featuring a singular trademark or lot number upon an otherwise blank roll. *See* Def.’s Post Hearing Submission at 1–2. However, anything beyond a singular symbol or number seems, under the Government’s proposed reading, to result in classification under Subheading 7607.20.10 as foil printed with a pattern and “covered” by printing appearing “here and there” across the roll. The court finds this proposed reading of Subheading 7607.20.10 to be overly broad. While foil covered with a decorative design — such as novelty kitchen foil — would certainly fall within the terms of 7607.20.10, foil that is simply printed with informative product information — such as the flexible packaging materials in this case — does not. Therefore, as it cannot qualify within the more-specific subheading of 7607.20.10, Formpack is properly classified under the residual subheading: 7607.20.50.

CONCLUSION

For the reasons set forth above, the court finds that Formpack is properly classified under Subheading 7607.20.50. The court accordingly grants Plaintiff’s motion for summary judgment and denies the Government’s cross-motion.

SO ORDERED.

Dated: February 22, 2022
New York, New York

/s/ Gary S. Katzmann
GARY S. KATZMANN, JUDGE



Slip Op. 22–16

WHEATLAND TUBE COMPANY, Plaintiff, v. UNITED STATES, et al.,
Defendants.

Before: Timothy C. Stanceu, Judge
Court No. 22–00004

[Denying plaintiff’s motion for a preliminary injunction.]

Dated: February 23, 2022

Roger B. Schagrin, Schagrin Associates, of Washington, D.C., for plaintiff Wheatland Tube Company. With him on the motion for a preliminary injunction were *Luke A. Meisner*, *Nicholas J. Birch*, and *Benjamin J. Bay*.

Tara K. Hogan, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for defendants. With her on the response to the motion for a preliminary injunction were *Brian M. Boynton*, Acting Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Antonia R. Soares*, Trial Attorney. Of counsel on the response was *Mathias Rabinovitch*, Attorney, Office of the Assistant Chief Counsel, U.S. Customs and Border Protection.

OPINION AND ORDER

Stanceu, Judge:

Plaintiff Wheatland Tube Company (“Wheatland”), a U.S. producer of steel pipes and tubes, moves for a preliminary injunction in an action brought earlier this year in response to certain administrative decisions of U.S. Customs and Border Protection (“Customs” or “CBP”).

Plaintiff’s motion seeks a preliminary injunction that would prohibit Customs, during the pendency of this litigation (including any appeals), and until such time as Customs responds to certain requests submitted by Wheatland, from liquidating entries of steel conduit pipe imported from Mexico according to subheading 8547.90, Harmonized Tariff Schedule of the United States (“HTSUS”). For classification within this tariff provision, electrical conduit tubing products made of steel must be lined with insulating material. Such goods are subject neither to 25% duties, nor to an import monitoring scheme, imposed by the President of the United States under Section 232 of the Trade Expansion Act of 1962, 19 U.S.C. § 1862 (“Section 232”), which delegates to the President the authority to adjust imports of products determined to threaten to impair the national security.¹

Wheatland’s submissions to Customs and to the court indicate a belief that Customs has allowed, or in the future may allow, steel electrical conduit that is not lined with insulating material to be classified erroneously in subheading 8547.90, HTSUS, under which it would not be subject to Section 232 duties or monitoring.

Because plaintiff has failed to demonstrate a likelihood that it will succeed on the merits of the claim it has brought in this action, the court denies plaintiff’s motion for preliminary injunctive relief.

I. BACKGROUND

On January 12, 2022, plaintiff brought this action against the United States, the Secretary of Homeland Security, and the Acting Commissioner of Customs and Border Protection, asserting subject matter jurisdiction according to the court’s residual jurisdiction provision, 28 U.S.C. § 1581(i). Summons, ECF No. 1; Compl. ¶ 2, ECF No. 4. On the same day, plaintiff filed a Petition for Writ of Mandamus (Jan. 12, 2022), ECF No. 7, and the instant motion for a preliminary injunction, Mot. for Prelim. Inj. (Jan. 12, 2022), ECF No. 8 (“Pl.’s Mot.”), with supporting memorandum, Mem. in Supp. of Mot. for Prelim. Inj. (Jan. 12, 2022), ECF No. 9 (“Pl.’s Mem.”).

¹ Citations herein to the United States Code are to the 2018 edition. Citations herein to the Code of Federal Regulations are to the 2021 edition.

In opposition to plaintiff's submissions, defendant filed a Combined Motion to Dismiss, Response to Plaintiff's Motion for a Preliminary Injunction, and Response to Plaintiff's Petition for a Writ of Mandamus (Feb. 2, 2022), ECF No. 12 ("Def.'s Mot."). In moving to dismiss, defendant argues that the court lacks jurisdiction because this action is moot, Def.'s Mot. 16–20, and, in the alternative, that Wheatland has failed to state a claim on which relief can be granted, *id.* at 21–25. With respect to the motion for a preliminary injunction, defendant argues that, for those reasons, plaintiff has failed to demonstrate a likelihood of success on the merits. *Id.* at 21–23.

The court issues an expedited ruling on plaintiff's preliminary injunction motion. *See* USCIT R. 65(e) ("*Precedence of Motions*. Motions seeking temporary or preliminary injunctive relief will be given precedence over other matters pending before the court and expedited in every way."). Because plaintiff has not yet filed a response to defendant's motion to dismiss, the court holds in abeyance any ruling on the issue of whether this action must be dismissed according to USCIT Rule 12(b)(1) or 12(b)(6).

This action arose over Wheatland's interest in tariff classification decisions Customs has applied and will apply to imports from Mexico of electrical conduit made of steel. In 2020 and 2021, Wheatland filed three submissions to Customs under Section 516 of the Tariff Act of 1930, *as amended*, 19 U.S.C. § 1516 ("Section 516"), directed to these imports. Wheatland's dissatisfaction with the responses Customs provided to these submissions resulted in the current litigation.

As a general matter, electrical conduit tubing made of base metal and lined with an insulating material is classified in subheading 8547.90, HTSUS ("... electrical conduit tubing and joints therefor, of base metal lined with insulating material: Other [than insulating fittings of ceramic or plastic]"). In contrast, steel pipe and tube suitable for use as electrical conduit that is not lined with an insulating material has been classified by Customs under heading 7306, HTSUS ("Other [than seamless] tubes, pipes and hollow profiles (for example, open seamed or welded, riveted or similarly closed), of iron or steel"). Products so classified are subject generally to 25% duties, or to an import monitoring scheme, by Presidential proclamations issued under Section 232.

A. The Presidential Proclamations Imposing "Section 232" Duties of 25% and Monitoring Schemes on Imported Steel Products, Including Steel Tubing

President Trump imposed 25% duties on various steel products upon issuing, under Section 232, Proclamation No. 9705, *Adjusting Imports of Steel Into the United States*, 83 Fed. Reg. 11,625 (Exec.

Office of the President Mar. 15, 2018) (“*Proclamation 9705*”). Steel products of heading 7306, HTSUS are included among those products. *Id.* at 11,629–30 (subjecting to 25% duty “tubes, pipes and hollow profiles provided for in heading 7304, or 7306; tubes and pipes provided for in heading 7305”).

Proclamation No. 9705 exempted steel products of Canada and Mexico from the 25% duties. *Id.* at 11,626. The President removed that exemption, effective June 1, 2018, and restored it on May 20, 2019, replacing it with a series of measures that included, *inter alia*, monitoring for import surges.²

B. Customs Ruling N306508

In February 2020, Customs issued a tariff classification ruling, New York Ruling Letter N306508 (Feb. 21, 2020), determining that “EMT/UL797 white conduit tubing” is classified under subheading 8547.90, HTSUS (“ . . . electrical conduit tubing and joints therefor, of base metal lined with insulating material: Other [than insulating fittings of ceramic or plastic]”). In one of its submissions to Customs that resulted in this action, Wheatland requested that Customs reconsider this ruling. Pl.’s Mem. 11.

C. The *Shamrock* Litigation

On April 6, 2020, Shamrock Building Materials, Inc. (“Shamrock”) brought an action in this Court, Summons, *Shamrock Building Materials, Inc. v. United States*, Ct. No. 20–00074 (Apr. 6, 2020), ECF No.

² See Proclamation No. 9705, *Adjusting Imports of Steel Into the United States*, 83 Fed. Reg. 11,625, 11,626 (Exec. Office of the President Mar. 15, 2018) (determining “that the necessary and appropriate means to address the threat to the national security posed by imports of steel articles from Canada and Mexico is to continue ongoing discussions with these countries and to exempt steel articles imports from these countries from the tariff, at least at this time”).

In Proclamation No. 9740, *Adjusting Imports of Steel Into the United States*, 83 Fed. Reg. 20,683, 20,684 (Exec. Office of the President May 7, 2018), the President announced the continuation of discussions with the governments of Canada and Mexico (and the European Union (“EU”)) and extended “the temporary exemption of these countries from the tariff proclaimed in Proclamation 9705, at least at this time,” and proclaimed that “unless I determine by further proclamation that the United States has reached a satisfactory alternative means to remove the threatened impairment to the national security by imports of steel articles from Canada, Mexico, and the member countries of the EU, the tariff set forth in clause 2 of Proclamation 9705 shall be effective June 1, 2018, for these countries.”

In Proclamation No. 9894, *Adjusting Imports of Steel Into the United States*, 84 Fed. Reg. 23,987, 23,987 (Exec. Office of the President May 23, 2019), the President announced that “[t]he United States has successfully concluded discussions with Canada and Mexico on satisfactory alternative means to address the threatened impairment of the national security posed by steel articles imports from Canada and Mexico” and “has agreed on a range of measures with Canada and Mexico to prevent the importation of steel articles that are unfairly subsidized or sold at dumped prices, to prevent the transshipment of steel articles, and to monitor for and avoid import surges.” The 25% tariff on steel products from Canada and Mexico was discontinued in favor of the range of measures, effective May 20, 2019. *Id.* at 23,988.

1, to contest the denial by Customs of its protests contesting liquidations of its entries of “electrical metallic tubing finished conduit (‘EMT’), and intermediate metal conduit (‘IMC’) . . . imported from Mexico,” Complaint ¶ 8, *Shamrock Building Materials, Inc.*, Ct. No. 20–00074, ECF No. 10, in which protest denials Customs classified Shamrock’s imported merchandise in subheading 7306.30, HTSUS (“Other [than seamless] tubes, pipes and hollow profiles (for example, open seamed or welded, riveted or similarly closed), of iron or steel: Other, welded, of circular cross section, or iron or nonalloy steel”), *id.* ¶ 31. In the litigation, Shamrock claims that its imported merchandise is properly classified in subheading 8547.90, HTSUS because it is “electrical conduit tubing of base metal lined with insulating material.” *Id.* ¶¶ 50, 52.

D. Wheatland’s Section 516 “Request for Information”

On December 11, 2020, Wheatland filed with Customs a “Domestic Interested Party Request for Information” (“Request for Information”) under Section 516 requesting that Customs, pursuant to 19 U.S.C. § 1516(a)(1), “furnish Wheatland with the classification and rate of duty or export license requirement imposed upon imports of steel conduit pipe from Mexico.” Compl. Ex. 2, at 1 (Letter from Roger B. Schagrín, Schagrín Associates, to Allyson R. Mattanah, Branch Chief, Chem., Petroleum, Metals and Misc. Articles Regs. and Rulings, Off. of Trade, U.S. Customs and Border Protection (Dec. 11, 2020) (on file with Customs)) (“*Request for Information*”); *see also* Pl.’s Mem. Ex. 2 (*Request for Information* at 1).

E. Wheatland’s Request for a Tariff Classification Ruling

On January 7, 2021, Wheatland filed a second request with Customs (the “Ruling Request”), this time seeking “a ruling pursuant to 19 U.S.C. § 1516(a)(2)(A) and 19 C.F.R. 175, Subpart B, regarding the correct classification of certain steel conduit pipe.” Compl. Ex. 3 (Letter from Roger B. Schagrín, Schagrín Associates, to Hon. Mark Morgan, Acting Commissioner, U.S. Customs and Border Protection (Jan. 7, 2021) (on file with Customs)) (“*Ruling Request*”); *see also* Pl.’s Mem. Ex. 3 (*Ruling Request*). The Ruling Request identified the subject of the submission as follows:

The imported merchandise that is the subject of this request is steel conduit pipe imported from Mexico, with or without interior coating, where any such coating does not have insulation properties. Electrical conduit pipe is used to route electrical wiring in a building or other structure. The imported merchandise is covered by this request whether it is EMT [galvanized

electrical metallic tubing finished conduit], IMC [intermediate metal conduit], or RMC [rigid metal conduit].

Ruling Request at 8. The Ruling Request further stated that “this merchandise is properly classified under HTS [Harmonized Tariff Schedule] 7306.30 and not under HTS 8547.90.” *Id.*

Wheatland’s Ruling Request added that “[a]s part of this request, Wheatland asks that Customs reconsider ruling N306508, ‘The tariff classification of steel conduit pipe from Thailand’ (Feb. 21, 2020), which concluded that HTS 8547.90.0020 applied to certain conduit made up of steel with an exterior coating of zinc and an interior coating of stoved epoxy resin.” *Id.* at 1. “Wheatland submits that ruling N306508 conflicts with other rulings, including N303775 (Apr. 26, 2019), which finds that electrical metal conduit and rigid steel conduit internally coated with epoxy resin are subject to HTS sub-heading 7306.30.” *Id.*

II. DISCUSSION

A. Wheatland’s Preliminary Injunction Motion

To obtain a preliminary injunction, Wheatland must establish that it is likely to succeed on the merits, that it is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities is in its favor, and that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). The preliminary relief Wheatland seeks would enjoin defendant:

from making or permitting liquidation of any unliquidated entries of steel conduit pipe entered into the United States under HTS 8547.90, for the pendency of this litigation, including any appeals, and until such time as Customs has responded to Plaintiff’s December 11, 2020 19 U.S.C. § 1516(a)(1) request for information and Petitioner’s January 7, 2021 19 U.S.C. § 1516(a) petition for tariff classification ruling.

Pl.’s Mot. 1.³

Were the court to reach a factual finding on the issue of irreparable harm, it first would hold an evidentiary hearing to ascertain the material facts. Here, no such hearing is necessary or appropriate because no preliminary injunction may issue if a movant cannot

³ A preliminary injunction is intended to prevent irreparable harm during the pendency of the action before the court and, therefore, dissolves upon the court’s entry of judgment. Even were the court able to grant a preliminary injunction in this case, it could not grant the preliminary injunction plaintiff proposes, which would extend beyond the entry of judgment in this action.

demonstrate at least some likelihood of success on the merits. Plaintiff's Complaint and the documentary exhibits to plaintiff's submissions in this litigation convince the court that plaintiff is unlikely to show that it has stated a claim on which relief can be granted. Therefore, plaintiff has failed to demonstrate that it is likely to succeed on the merits of the claim it has brought in this litigation.

B. Wheatland Has Not Demonstrated the Likelihood that Relief Can Be Granted on its Claim

Wheatland alleges in its Complaint as follows: "As of the date of the filing of this Complaint [January 12, 2022], Customs has failed to respond to Plaintiff Wheatland's December 11, 2020 19 U.S.C. § 1516(a)(1) request for information and Plaintiff's January 7, 2021 19 U.S.C. § 1516(a) petition for tariff classification ruling." Compl. ¶ 40. The Complaint also alleges that "Customs has stated that it will not respond to either Plaintiff Wheatland's December 11, 2020 19 U.S.C. § 1516(a)(1) request for information and Plaintiff's January 7, 2021 19 U.S.C. § 1516(a) petition for tariff classification ruling." *Id.* ¶ 41. The Complaint alleges, further, that:

Given that the misclassification of imports of steel conduit pipe allows import volumes in excess of historical levels, contrary to the agreement between Mexico and the United States, the failure of Customs to respond to Plaintiff Wheatland's December 11, 2020 19 U.S.C. § 1516(a)(1) request for information and Plaintiff's January 7, 2021 19 U.S.C. § 1516(a) petition for tariff classification ruling is unreasonable.

Id. ¶ 42.

The court interprets Wheatland's claim to be that Customs, following Wheatland's submissions of the Request for Information and the Ruling Request, acted unreasonably, *id.*, in failing to "respond" to these submissions in a way that complied with Section 516.⁴ *See id.* ¶ 40.

1. The Responses by Customs to the Request for Information

With respect to the Request for Information, the court interprets plaintiff's factual allegation in paragraph 40 of its Complaint—that Customs has failed to respond—as an allegation that the two re-

⁴ Defendant argues that because Customs has responded to Wheatland's two requests, Wheatland's claim that Customs "failed to respond" is moot and that the court therefore lacks jurisdiction. Combined Mot. to Dismiss, Resp. to Pl.'s Mot. for a Prelim. Inj., and Resp. to Pl.'s Pet. for a Writ of Mandamus 16–20 (Feb. 2, 2022), ECF No. 12. As discussed herein, the court construes the claim liberally as an allegation that Customs has not responded in a way that satisfies the requirements of Section 516(a) of the Tariff Act of 1930, *as amended*, 19 U.S.C. § 1516(a). So construed, plaintiff's claim is not moot.

sponses Customs provided to the Request for Information were unreasonable and, therefore, inadequate to satisfy Section 516. Even when liberally construed in this way, plaintiff's allegation is contradicted by the documents plaintiff attached as exhibits to its submissions.

As is relevant here, Section 516 requires Customs, "upon written request by an interested party," to "furnish the classification and the rate of duty imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by such interested party." 19 U.S.C. § 1516(a)(1). The Request for Information identified the "class or kind of merchandise" by stating that "[t]he imported merchandise that is the subject of this request is steel conduit pipe imported from Mexico, with or without interior coating, where any such coating does not have insulation properties." *Request for Information* at 4–5. "The imported merchandise is covered by this request whether it is electrical metallic tubing finished conduit ('EMT'), intermediate metal conduit ('IMC'), or rigid metal conduit ('RMC')." *Id.* at 5.⁵

Customs first responded to the Request for Information in a January 22, 2021 letter to Wheatland's counsel. Def.'s Mot App. A2 (Letter from Allyson R. Mattanah, Branch Chief, Chem., Petroleum, Metals and Misc. Articles Regs. and Rulings, Off. of Trade, U.S. Customs and Border Protection, to Roger B. Schagrin, Schagrin Associates (Jan. 22, 2021) (on file with Schagrin Associates)). The substance of the letter was as follows:

U.S. Customs and Border Protection (CBP) liquidated entries of certain steel conduit pipe imported by Shamrock Building Materials, Inc. (Shamrock) between April 26, 2019, through July

⁵ The "Domestic Interested Party Request for Information" ("Request for Information") provided information extraneous to the identification of the class or kind of merchandise that was the subject of the request. It referred to "imported electrical conduit from Mexico" on entries by Shamrock and by another importer, Liberty Products Inc., dba RYMCO U.S.A. Compl. Ex. 2, at 2 (Letter from Roger B. Schagrin, Schagrin Associates, to Allyson R. Mattanah, Branch Chief, Chem., Petroleum, Metals and Misc. Articles Regs. and Rulings, Off. of Trade, U.S. Customs and Border Protection (Dec. 11, 2020) (on file with Customs) ("*Request for Information*"); see also Pl.'s Mem. Ex. 2 (*Request for Information* at 2). Wheatland cited information that it believed showed that these two importers were improperly importing electrical conduit according to an entered classification of subheading 8547.90, HTSUS instead of subheading 7306.30, HTSUS, which, Wheatland argued, is the correct classification. *Request for Information* at 2. The Request for Information mentioned Wheatland's belief that importers, through their misclassifications, had evaded 25% duties imposed by Presidential Proclamation 9705 on past entries and, since the removal of those tariffs in favor of export licensing and monitoring regimes, were misclassifying imports to escape those regimes. *Id.* Regarding imports by Shamrock, the Request for Information stated that "[o]n December 21, 2018, CBP issued a Form 29 Notice of Action advising Shamrock that Customs had concluded that the more appropriate classification for its entries of electrical conduit is 7306.30.5028, and CBP instructed Shamrock Steel to use this classification for all current and future entries." *Id.*

19, 2019, inclusive, in subheading 7306.30.10, HTSUS, or in 7306.30.50, HTSUS, depending on whether the wall thickness of the pipe was less than 1.65 mm. The 2020 column one, general rate of duty for both subheadings is Free.

Shamrock filed an action in the Court of International Trade (CIT), challenging the classification of its steel conduit pipe under those tariff provisions. Therefore, the issue of the classification of the merchandise described above is now before the CIT in *Shamrock Building Materials, Inc. v. United States*, No. 20–00074, and will be adjudicated in that forum.

Id. Dissatisfied with that response, Wheatland made a third submission that supplemented its Request for Information (“Supplemental Information Request”). Def.’s Mot. App. A3 (Letter from Roger B. Schagrin, Schagrin Associates, to Allyson R. Mattanah, Branch Chief, Chem., Petroleum, Metals and Misc. Articles Regs. and Rulings, Off. of Trade, U.S. Customs and Border Protection (Feb. 22, 2021) (on file with Customs)) (“*Supplemental Information Request*”). Wheatland told Customs that its “classification request does not cover any of the entries covered by the action currently pending before the CIT in *Shamrock Building Materials, Inc. v. United States*, No. 20–00074” and that “[w]e therefore consider Wheatland’s December 11, 2020 classification request to be still open and pending before the agency and respectfully request CBP to take further action on this matter.” *Id.* at A4. The letter explained that its request “only asks CBP to respond to two simple questions: 1. Under what tariff classification have Shamrock’s imports of steel conduit pipe been entered since August 31, 2020 to the present? 2. Under what tariff classification have RYMCO USA’s imports of steel conduit pipe been entered since August 31, 2020 to the present?” *Id.*

Customs further responded to the Request for Information in an April 9, 2021 letter to Wheatland’s counsel. Pl.’s Compl. Ex. 7 (Letter from Craig T. Clark, Director, Com. and Trade Facilitation Div., U.S. Customs and Border Protection, to Roger B. Schagrin, Schagrin Associates (Apr. 9, 2021) (on file with Schagrin Associates)) (“*Final Response*”); Pl.’s Mem. Ex. 7 (*Final Response*). Customs took the position, first, that the tariff classifications Shamrock and RYMCO U.S.A. listed on their entry documentation were information precluded from public disclosure by the Trade Secrets Act, 18 U.S.C. § 1905 and, second, that “your request fails to clearly frame a proper request under 19 U.S.C. § 1516(a).” *Id.* at 2. Customs added that “[m]oreover, as a matter of the designated imported merchandise you described in your initial letter as ‘steel conduit pipe imported from Mexico, with or without interior coating, where any such coating does

not have insulation properties’, CBP’s position is that the merchandise is classified in heading 7306, HTSUS, irrespective of the date of entry.” *Id.* Customs then stated:

More specifically, and as stated in our letter, dated January 22, 2021, CBP has liquidated entries of certain steel conduit pipe imported by Shamrock in subheadings 7306.30.10 and 7306.30.50, HTSUS, depending on the wall thickness of the pipe, and it is currently defending that position in the U.S. Court of International Trade (CIT). However, the CIT will likely rule on the correct classification of Shamrock’s imported pipe.

Id. at 2–3.

Upon reviewing the Request for Information, as originally submitted and as clarified in Wheatland’s supplemental information request, and upon reviewing both of CBP’s responses, the court concludes that Customs responded to the Request for Information in a way that satisfied the requirements of Section 516(a)(1). Customs was required to “furnish the classification and the rate of duty imposed upon designated imported merchandise of a class or kind” produced by Wheatland. 19 U.S.C. § 1516(a)(1). Wheatland designated the imported merchandise as “steel conduit pipe imported from Mexico, with or without interior coating, where any such coating does not have insulation properties . . . whether it is electrical metallic tubing finished conduit (‘EMT’), intermediate metal conduit (‘IMC’), or rigid metal conduit (‘RMC’).” *Request for Information* at 4–5. In its Supplemental Information Request, Wheatland sought the tariff classifications by which two importers, Shamrock and RYMCO USA, have entered steel conduit pipe since August 31, 2020. *Supplemental Information Request* at 2.

CBP’s responses, when read together, placed Wheatland on notice of the position of Customs that the imported merchandise Wheatland designated is properly classified in subheading 7306.30.10, HTSUS, or in 7306.30.50, HTSUS, depending on wall thickness, and that the 2020 column one, general rate of duty for both subheadings is Free. Section 516(a)(1) did not require Customs to provide information in addition to that. As the language and purpose of Section 516(a)(1) make clear, the information was sufficient to allow Wheatland to decide whether it believes the classification position of Customs “is not correct” and, in that event, to “file a petition” with Customs stating what it believes is the “proper” classification and “the reasons for its belief.” 19 U.S.C. § 1516(a)(1).

Wheatland’s submissions show that Wheatland agrees with CBP’s position on the proper tariff classification of the imported merchandise that Wheatland designated in its Request for Information. And

as Customs correctly recognized and informed Wheatland, Section 516(a)(1) is not a mechanism by which a domestic interested party may obtain information presented on entry documentation submitted by or on behalf of specific importers, regardless of whether Customs was free to disclose such information under the restrictions of the Trade Secrets Act. The premise of Wheatland’s claim, which is that Customs did not respond to the Request for Information in a way that satisfies the requirements of Section 516(a)(1), is based on a misinterpretation of this statutory provision and the corresponding Customs regulations in 19 C.F.R. Part 175, Subpart A. Plaintiff, therefore, has failed to show a likelihood of success on the merits of its claim as it relates to the Request for Information.

2. CBP’s Decision on the Ruling Request and its Denial of the Request to Reconsider the Tariff Classification Position Taken in New York Ruling Letter N306508

Wheatland’s claim that Customs has failed to provide a response to “Plaintiff’s January 7, 2021 19 U.S.C. § 1516(a) petition for tariff classification ruling,” Compl. ¶ 40, also misinterprets Section 516(a)(1), as well as the related Customs regulations, 19 C.F.R. Part 175, Subparts B and C. Because Wheatland’s submissions to Customs demonstrate agreement with the stated classification position of Customs, the Ruling Request is not a “petition” conforming to Section 516(a)(1). Customs, therefore, correctly refrained from issuing a “determination” of the correct classification in response to a petition, pursuant to Section 516(b), 19 U.S.C. § 1516(b), or a notification in response to a petition, pursuant to Section 516(c), 19 U.S.C. § 1516(c). Wheatland, therefore, has failed to show a likelihood of success on the merits of its claim as it relates to the Ruling Request.

Although Section 516(a)(1) did not require it to do so, Customs also responded to Wheatland’s urging, in the Ruling Request, that Customs reconsider the tariff classification position taken in New York Ruling Letter N306508. In responding, Customs implicitly treated the Ruling Request as a request for a tariff classification ruling under Part 177 of the Customs Regulations. CBP’s April 9, 2021 communication to Wheatland informed Wheatland that its regulation, 19 C.F.R. § 177.7(b), precluded issuance of any such ruling because “the issue of the classification of steel conduit pipe is currently before the CIT” in the pending litigation in *Shamrock Building Materials, Inc.*, Ct. No. 20–00074.⁶ *Final Response* at 3. Plaintiff has not shown that it will succeed in demonstrating that the refusal to issue a ruling,

⁶ “No ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom.” 19 C.F.R. § 177.7(b).

which Customs grounded in an interpretation of its own regulations, was unreasonable or otherwise contrary to law.

III. CONCLUSION AND ORDER

In conclusion, plaintiff is unlikely to succeed in showing that it has brought a claim on which relief can be granted. Therefore, plaintiff has not demonstrated that it is likely to succeed on the merits of this claim and, accordingly, is not entitled to a preliminary injunction.

Upon consideration of plaintiff's motion for a preliminary injunction, Mot. for Prelim. Inj. (Jan. 12, 2022), ECF No. 8, all papers and proceedings had herein, and upon due deliberation, it is hereby

ORDERED that plaintiff's motion for a preliminary injunction be, and hereby is, denied.

Dated: February 23, 2022
New York, New York

/s/ Timothy C. Stanceu

TIMOTHY C. STANCEU

JUDGE

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