

# U.S. Customs and Border Protection



## DEPARTMENT OF THE TREASURY

### 19 CFR PART 12

### CBP DEC. 22-05

## IMPORT RESTRICTIONS IMPOSED ON CATEGORIES OF ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIAL OF NIGERIA

**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 import restrictions on certain categories of archaeological and ethnological material from the Federal Republic of Nigeria (“Nigeria”). These restrictions are being imposed pursuant to an agreement between the United States and Nigeria that has been entered into under the authority of the Convention on Cultural Property Implementation Act. This document amends the CBP regulations by adding Nigeria to the list of countries which have a bilateral agreement with the United States that imposes cultural property import restrictions. This document also contains the Designated List that describes the types of archaeological and ethnological material to which the restrictions apply.

**DATES:** Effective on March 17, 2022.

**FOR FURTHER INFORMATION CONTACT:** For legal aspects, W. Richmond Beevers, Branch 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.* (“the Cultural Property Implementation Act”), implements the 1970 United Nations Educational, Scientific and Cultural Organization (“UNESCO”) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (“the Convention” (823 U.N.T.S. 231 (1972))). Pursuant to the Cultural Property Implementation Act, on January 20, 2022, the United States entered into a bilateral agreement with the Federal Republic of Nigeria (“Nigeria”) to impose import restrictions on certain archaeological and ethnological material from Nigeria. This rule announces that the United States is now imposing import restrictions on certain archaeological and ethnological material from Nigeria.

### *Determinations*

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On March 9, 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 required under the statute with respect to certain archaeological and ethnological material originating in Nigeria that is described in the Designated List set forth below in this document.

These determinations include the following: (1) That the cultural patrimony of Nigeria is in jeopardy from the pillage of certain types of archaeological material representing Nigeria’s cultural heritage dating from approximately 1500 B.C. to A.D. 1770, and certain categories of ethnological material dating from approximately A.D. 200 to the early 20th century A.D. (19 U.S.C. 2606(a)(1)(A)); (2) that the Nigerian government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Acting Assistant Secretary also found that the

material described in the determinations meets the statutory definition of “archaeological or ethnological material of the State Party” (19 U.S.C. 2601(2)).

### *The Agreement*

On January 20, 2022, the United States and Nigeria signed a bilateral agreement, “Memorandum of Understanding between the United States of America and the Federal Republic of Nigeria Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Nigeria” (“the Agreement”), pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement entered into force upon signature and enables the promulgation of import restrictions on categories of archaeological material, ranging in date from approximately 1500 B.C. to A.D. 1770, and certain categories of ethnological material, ranging in date from approximately A.D. 200 to the early 20th century A.D., representing Nigeria’s cultural heritage. A list of the categories of archaeological and ethnological material subject to the import restrictions is set forth later in this document.

### *Restrictions and Amendment to the Regulations*

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

Import restrictions listed as 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the Agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the Agreement still pertain and no cause for suspension of the Agreement exists. The import restrictions will expire on January 20, 2027, unless extended.

### *Designated List of Archaeological and Ethnological Material of Nigeria*

The Agreement between the United States and Nigeria includes, but is not limited to, the categories of objects described in the Designated List set forth below. Importation of material on this list is

restricted unless the material is accompanied by documentation certifying that the material left Nigeria legally and not in violation of the export laws of Nigeria.

The Designated List includes archaeological and ethnological material from Nigeria. The archaeological material in the Designated List includes, but is not limited to, objects made of ceramic/terracotta, stone, metal, and organic material ranging in date from approximately 1500 B.C. through A.D. 1770. The ethnological material in the Designated List includes, but is not limited to, objects used in or associated with religious activities, part of community or ancestral shrines, and/or royal or chiefly activities, including beads and beaded garments, figures, ivory and bone, leather and parchment, masks and headdresses, metals, stone, ceramic/terracotta, wood, paintings, and other ceremonial and ritual objects from the Edo (includes Benin), Ejagham, Hausa, Mumuye, Owo, Yoruba, and other cultural and ethnic groups, ranging in date from approximately A.D. 200 through the early 20th century A.D. Dates and dimensions are approximate.

### **Categories of Archaeological and Ethnological Material**

#### **I. Archaeological Material**

- A. Ceramic/Terracotta/Fired Clay
- B. Stone
- C. Metal
- D. Organic Material

#### **II. Ethnological Material**

- A. Beads and Beaded Garments
- B. Figures
- C. Ivory and Bone
- D. Leather and Parchment
- E. Masks and Headdresses
- F. Brass and Bronze
- G. Iron
- H. Stone
- I. Ceramic/Terracotta
- J. Wood
- K. Paintings

*Approximate simplified chronology of well-known periods:*

(a) Iron Age period (500 B.C. through A.D. 1000), including Nok (1500 B.C. through 0 B.C.), Katsina (500 B.C. through A.D. 200), Sokoto (500 B.C. through A.D. 200), Calabar (500 B.C. through A.D. 1200), and Bakor (A.D. 200 through 500).

(b) Medieval to Precolonial period (A.D. 900 through 1900), including Igbo-Ukwu (c. A.D. 900), Ife (A.D. 1100 through 1500), Esie (A.D. 1200 through 1500), and Owo (c. A.D. 1400).

(c) Colonial period (A.D. 1900 to 1960).

## **I. Archaeological Material**

Archaeological material covered by this Agreement is associated with cultural groups who occupied Northern and Southern Nigeria from the Early Nok period in the Late Stone Age (1500 B.C.) through the Medieval and Precolonial periods (A.D. 1770). Examples of archaeological material covered by the Agreement include objects from well-known culture areas/archaeological sites, including yet to-be-discovered types of archaeological material.

### *A. Ceramic/Terracotta/Fired Clay*

1. Anthropomorphic Figures—Terracotta anthropomorphic figures include heads and full-length human shapes. Human figures may be natural or stylized in appearance. Anthropomorphic figures covered by the Agreement include, but are not limited to, figures from the following cultures:

a. Calabar Culture—Anthropomorphic figures from the Calabar culture were crafted from coiled clay with a coarse texture. Height varies, typically between 15 cm and 50 cm. Forms may be closed with a base, body, neck, and head. The body may resemble an elongated, globular vase with the head enclosing the rim of the vase. Horizontal bands may differentiate the base from the body, neck, and head. Bases are usually undecorated. Bodies are typically divided into vertical sections and decorated with raised patterns and shapes including basket weaves, cross hatching, incisions, herringbone, roped designs, zig zags, and others. Anthropomorphic faces are compressed, while the head/hairstyle decorations tend to be more elaborate, typically with coiled or braided designs and headgear, although some may be bald. It may be hard to distinguish male from female figures in Calabar anthropomorphic vessels.

b. Nok Culture—Anthropomorphic figures and heads from the Nok culture tend to be stylized and represent children and adults. Height varies widely from miniatures to life size. Postures vary with figures in half-kneeling, kneeling, sitting, or standing forms. Gestures include bent arms, crossed arms, holding an animal by the neck, or holding an object. Figures may have some clothing, such as belts/loincloths with creases and overlapping fabric that may be decorated with patterns and fringe; they may be elaborately adorned with representations of roped strands of beads at the abdomen, chest, and/or feet. Faces may have dented or pierced ears, lips, nostrils, and

pupils; eyes are triangular or D-shaped and are disproportionately large. Eyebrows are arched. Some Nok mouths have stylized teeth. Hairstyles can be elaborate with several buns. Foreheads may have incisions, likely representing scarification. Some Nok figures may have a diseased appearance represented by facial features, including paralysis or elephantiasis. Feet are bare. Fingernails and toenails may be realistic or represented with triangular cuts on the nail bed. Many Nok figures are found in disarticulated or in fragmentary forms.

c. Ife Culture—Anthropomorphic figures and heads from the Ife culture tend to be naturalistic and made of terracotta, typically 9 cm to 35 cm tall. Ife figures tend to be symmetrical and may be free-standing. Some Ife figures may have caps or crowns in multiple tiers. Ife facial characteristics include, but are not limited to, vertical striations on the face, overhanging corners of the upper and lower eyelid, impressed corners of the mouth, and grooves around the neck.

d. Owo Culture—Anthropomorphic figures and heads from the Owo culture tend to be naturalistic and made of terracotta. Owo figures may be adorned with caps or headdresses, armbands or bracelets, belts, and/or collars. Owo figures may have triangular fingernails and toenails. Owo figures may hold decapitated or whole animals, including cocks, elephants, lizards, rams, or other animals.

e. Sokoto Culture—Anthropomorphic figures from the Sokoto culture are stylized and tend to have elongated, cylindrical bodies with molded heads. Sokoto faces have U-shaped drooping eyelids with pierced eyes and incisions that outline the eye; nostrils may be pierced, and mouths may be slightly agape. Sokoto figures may have elaborate hairstyles with several buns and beards. Navels are prominent and herniated. Figures may have attached and bent arms, and may be holding objects such as adzes, staffs, or weapons. Figures may be wearing banded necklaces with pendants.

f. Katsina Culture—Anthropomorphic figures from the Katsina culture are stylized. Katsina figures are often attached to the top of a globular jar or bell-shaped urn. Katsina positions often have hands resting on knees. Heads tend to wear caps.

2. Zoomorphic Figures—Figures in the shape of animals made from terracotta/fired clay include freestanding whole figures and animal heads. Figures may be stylized or naturalized. Animals represented may include, but are not limited to, apes, chameleons, dogs, frogs, goats, leopards, mudfish, monkeys, owls, rams, and snakes. Some zoomorphic figures may be perched on top of bell-shaped urns. Eyes may be carved from incisions, and there may be pierced holes for the eyes or the ear cavity.

3. Vessels—Types, forms, and decoration of terracotta vessels vary among archaeological styles over time. Shapes include bowls, bowls with lids, jars, stands, and effigy vessels. Jars often have globular bases with everted or cylindrical rims. Jars may have elongated forms. Decorative styles on the exterior of jars and stands vary and may be high- or low-relief elements. Decorative elements on the exterior of jars and stands may include low-relief elements, such as cross hatches, incisions, stamps, braided roulette, or twisted roulette. High-relief elements may include naturalistic heads, stylized heads, manillas, mudfish, other aquatic animals, snakes, sacrificial offerings, stylized architectural elements, geometric shapes, and/or stylized plant or vegetal elements. Nok vessels may have multiple anthropomorphic forms added in high-relief to the exterior of the vessel. Nok vessels may also have stylized heads carved into the exterior of the vessel with many of the same attributes found in the figures, including, but not limited to, arched eyebrows and D-shaped eyes.

4. Headrests—Terracotta headrests may have a triangular or trapezoidal shape. Headrests vary in height but are typically 12 cm tall and 45 cm in length. Headrests are composed of a base, body, neck, and curved or slightly concave horizontal top. Bases and curved horizontal tops tend to be undecorated. Bodies of headrests are elaborately decorated with elements, such as cross hatches, incisions, and/or stamps. Negative areas may be cut from the body of the headrest leaving interlocked geometric designs, including, but not limited to, chevrons or cruciforms. Headrests from the Calabar culture are a good example of the style.

5. Stelae/Funerary Urns—This category includes stelae and urns from funerary/burial contexts from the Dakakari and Katsina cultures. Urns and stelae are normally 70 cm in height. Shapes are typically complex with a circular base with vertical pillars supporting a circular or disc-shaped top. Disc-shaped tops may be decorated with a geometric design, human or animal faces, or body parts. There may be surface decoration, including incisions, piercing, stamping, or others.

#### *B. Stone*

1. Monoliths—Monoliths (*e.g.*, Akwanshi, Cross River, Ejagham, Bakor, and Ikom) are typically carved from basalt, and range in height from 50 cm to 2 m. Monoliths vary and may be carved in either a column or boulder-like form. Monoliths are carved and can have both low- and high-relief elements. Most monoliths represent male figures, but there are also examples of female and animal figures. Some monoliths have well defined facial features with beards, head-

dresses, or hairstyles, and may have complex, linear patterns on the face and torso. The head and torso of the monolith are often differentiated with a V-shaped groove or ridge. The torso often has a protruding navel.

2. Figures—Stone Figures (*e.g.*, Esie soapstone) are usually carved from steatite or soapstone. Soapstone figures come from Yoruba villages, including Esie, Ijara, and Ofaur. Figures feature animals, children, and adult figures, often seated on a stool or kneeling on a circular base. Figures are typically 20 cm to 120 cm in height. Most soapstone figures have elaborate hairstyles, conical headdresses, or helmets. Headdresses and hats may be decorated with chevrons, leaves, rosettes, and/or tassels. Facial features are naturalistic with outlined eyes, flared nostrils, and an elongated bridge on the nose. There may be striations on the face, including three striations on the temple, vertical lines on the chin, or three lines on the forehead. Female figures have three or four marks on the nape of the neck. Figures are typically adorned with necklaces and bracelets. Female figures may be holding swords and males may have quivers with arrows.

3. Beads—Stone beads may be crafted from carnelian, chalcedony, or other crypto-crystalline silicates, jasper, or quartz. Bead forms may be cylindrical, approximately 2 cm in length. Beads may also be rod or ring-shaped.

4. Axes (*nyame akuma*)—Groundstone or polished axes (*nyame akuma*) have elongated forms, and, in their cross-section, are teardrop shaped. Axes often measure 6 cm in length or less, but can measure up to 20 cm. Most groundstone axes are crafted from fine-grained volcanic or siliceous rock, sometimes with a banded pattern in the raw material.

### C. Metal

1. Brass and Bronze—There are three types of alloys typically used in archaeological metal sculpture, vessels, and ornaments from Nigeria: (1) Copper or zinc brass; (2) leaded bronze copper with tin and lead; and (3) bronze made from copper alloys, such as copper and tin, or copper and lead. Despite this variation, Nigerian sculpture is often referred to interchangeably as brass and bronze.

a. Anthropomorphic Figures—Examples of anthropomorphic brass and bronze figures include, but are not limited to, the following:

i. Ife Brass and Bronze Figures—These include life-sized heads (sometimes with necks), masks, and full-length figures. Ife brass and bronze figures may have naturalistic features. There may be vertical striations covering the face, and in some cases on the bottom lip. There may be horizontal lines around the circumference of the neck.



There may be perforations along the hairline, jawline, around the mouth, under the ears, and on the neck. Ife brass and bronze figures may have caps, crowns, or headdresses.

ii. Bronze Figures from Lower Niger Region—Bronze figures from the Lower Niger region (e.g., Tsoede and Jebba Island) are full-length figures that typically range from 40 cm to 120 cm. Lower Niger bronzes are less naturalistic and more stylized than Ife bronzes and bronzes. Figures may depict hunters, priests, warriors, or other roles. Facial features include heavily outlined and wide bulging eyes, kidney shaped mouth, compact body, wide tubular legs, and flat feet set on a pedestalled base. Lower Niger figures may have elaborate caps, crowns, or headdresses. Headdress decorations may include beads, decorative disks, horns, or small anthropomorphic or zoomorphic figures. Some carry or hold shields or staffs, or have clasped hands. Figures are often adorned with necklaces and anklets. Some may be wearing full-body tunics or belted skirts/wrappers cinched at the waist. Some may be composite of a horse and rider.

b. Zoomorphic Figures—Igbo Ukwu zoomorphic brass and bronze figures include stylized animal figures that may represent whole animals or partial animal parts, typically the head or skull. Zoomorphic figures include birds, elephants, leopards, rams, snakes, and others. Zoomorphic figures are ornately and densely decorated with encrusted designs and patterns. Geometric decorative elements can include basketweave patterns, discs, granulation, raised knobs or loops, spirals, meshwork with interlocking chevrons, metal threads, and waves. Organic decorative elements can include images of beetles, birds, eggs, flies, grasshoppers, leopards, shells, snakes, and stylized plants and flowers. Trumpet-shaped decoration can surround animal skulls.

c. Vessels—Igbo-Ukwu vessels were cast in brass and bronze using the lost-wax method (*cire perdue*). Vessels come in many forms, including open and closed forms of bowls, cups, jars, stands, and composite shapes mirroring shells and calabashes. Vessel height typically varies between 12 cm to 35 cm. Vessel decoration can vary from organic to geometric shapes. Igbo-Ukwu vessels are elaborately and ornately decorated with encrusted designs and patterns. Geometric decorative elements can include basketweave patterns, discs, granulation, raised knobs or loops, spirals, meshwork with interlocking chevrons, metal threads, and waves. Organic decorative elements can include images of beetles, birds, flies, grasshoppers, leopards, shells, snakes, and stylized plants and flowers. Decorative elements can be in either high- or low-relief forms. Some vessels may have handles on one or

two sides of the body or top. Blue, red, and yellow glass beads are sometimes attached to the exterior of vessels.

d. Ornaments—Examples of ornaments include, but are not limited to, the following:

i. Igbo-Ukwu Brass and Bronze Ornaments—These include, but are not limited to, altar stands, animals, bells, eggs, fly whisks, human figures, miniature heads, pendants, scabbards, shells, and staff topers. Decorative forms may be a composite with multiple figures (for example, a horse and rider, snake and pangolin, snake and frog, or others). Ornament sizes vary, but they are typically between 6 cm to 50 cm in height. Ornaments tend to be ornately and densely decorated with encrusted designs. Decorative elements include, but are not limited, to basketweave patterns, discs granulation, incisions, interlocking geometric designs, raised knobs or loops, and spirals. Blue, red, and yellow glass beads are sometimes attached to the exterior of ornaments.

ii. Lower Niger Ornaments—These include brass and bronze bells. Ornament sizes vary, but they are typically between 10 cm to 20 cm in height. Bells have conical shapes. Bells may have either stylized human or animal faces with flared lips, protruding eyes, and striations on the forehead and/or near the mouth. There may be ears protruding from the conical body of the bell. There may be a loop on top of the bell that allowed bells to be fastened to other objects.

2. Iron—Iron objects include, but are not limited to, ceremonial swords, jewelry (*e.g.*, anklets, armbands, and bracelets), knives, projectiles, staffs, and other hand-held implements.

#### *D. Organic Material*

This category includes bone, ivory, leather, textiles, and wood from archaeological contexts, such as human remains, animal remains, basketry, burial shrouds, containers, garments, figurines, textiles, tools, and vessels.

## **II. Ethnological Material**

Ethnological material covered by the Agreement includes, but is not limited to, objects that were used in religious activities, part of community or ancestral shrines, and/or used in royal or chiefly activities. Objects are associated with many cultures and civilizations ranging in date from approximately 200 A.D. through the early 20th century A.D. Nigeria's cultures, cultural complexes, and polities include groups, such as the Afo, Bassa-Nge, Benin, Bokyi, Chamba, Cross River Basin Peoples, Dakakari, Edo, Ekoi, Hausa, Ibibio, Idoma,

Igala, Igbo, Ijaw, Ijo, Fulani, Jukun, Kanem-Borno, Mambila, Mama, Montol, Mumuye, Nupe, Ogoni, Okpoto, Sokoto, Tiv, Wamba, Verre, and Yoruba.

#### *A. Beads and Beaded Garments*

Beads and beaded garments include, but are not limited to, boots, caps, crowns, dance panels, diviner's bags, garments for altar figures, gowns, footrests, leggings, fly whisks, scepters, and sheaths for ceremonial swords and other hand-held royal or chiefly implements, such as staffs used in or associated with religious activities, community or ancestral shrines, and/or royal or chiefly activities.

#### *B. Figures*

Figures come in many forms and were crafted from different types of material, such as terracotta/fired clay, stone, and wood. Figures tend to depict humans, human heads, and animals, and may be naturalistic or stylized. Figures include, but are not limited to, figures made by Afo artists, Chamba figures, Ekpu figures, Ibeji figures, Igbo ancestor and shrine figures, Ijo figures, Jukun figures, Mbembe figures, Ogboni figures, Oron figures, Mumuye figures, Urhobo figures, Verre figures, Yoruba figures, ecclesiastical figures, and others used in or associated with religious activities, community or ancestral shrines, and/or royal or chiefly activities. Signs of wear depend on the intended use of the object and range from well-preserved surfaces to worn and/or encrusted surfaces.

#### *C. Ivory and Bone*

Ivory and bone objects come in many forms, including, but not limited to, altar pieces, boxes, bowls, bracelets, ceremonial swords, costume attachments, divination tappers, ecclesiastical objects, figures, gongs, horns/trumpets, masks, paddles, pendants, rattles, salt cellars, spoons, staffs, staff heads, vessels, and other objects. Ethnological objects made from ivory include Afro-Portuguese ivories, which are ornately carved and often in the form of salt cellars, trumpets, spoons, pendants, or vessels. Ivory and bone objects are typically associated with the Edo, Owo, and Yoruba cultures, and date approximately from the 15th through the 19th centuries A.D.

#### *D. Books and Manuscripts*

Secular and religious Islamic texts, manuscripts, and portions of manuscripts, including but not limited to, Qur'ans, commentaries, essays, letters, poetry, treatises, and other documents spanning the subjects of astronomy, chronicles, ethics, history, Islamic philosophy, law, literature, prophetic traditions, secret arts, Sufism, and related subjects. Books and manuscripts may be in sheets or in bound volumes, and may be decorated with colorful, geometric, or organic

designs. Text is handwritten on paper and may be gathered into leather folios, and may be written in Arabic, Ajami, Hausa, or Fulfulde scripts.

#### *E. Masks and Headdresses*

Masks and headdresses were typically created in three forms: (1) Helmet-style; facemasks; and (3) headcrests (worn on the top of the head). Masks and headdresses may show signs of use from being worn, used repeatedly, and fastened to the wearer. They may be crafted from brass/bronze, coconut shells, iron, ivory, leather, raffia, wood, vegetable fibers, or a combination of materials. They may be carved and ornamented with decorative and symbolic motifs. Beads, bells, and/or shells may be attached. They may be carved and decorated to represent human, animal, and composite forms (*e.g.*, horse and rider). Some masks, like those of the Yoruba and the Igbo region, may be painted with vibrant colors. Masks may also come in Janus style (double-sided) or plank forms. Masks may have been worn by men, women, and children. Masks may be encrusted with layers of clay, kaolin, ochre, soil, or sediment. Examples of masks include those used in or associated with religious activities and/or royal or chiefly activities, such as face masks from Bassa-Nge, Ibibio, and Yoruba, helmet masks from Ejagham, Igala, and Mambila, or crest masks or headdresses from Bokyi, Ejagham, Ekoi, Ibibio, Idoma, Igbo, Ijo, Mama, and Yoruba.

#### *F. Brass and Bronze*

There are three types of alloys typically used in ethnological metal sculpture from Nigeria: (1) Copper or zinc brass; (2) leaded bronze copper with tin and lead; and (3) bronze made from copper alloys, such as copper and tin or copper and lead. Despite this variation, Nigerian sculpture is often referred to interchangeably as brass and bronze. Benin Bronzes are the best-known examples. Examples of Benin Bronzes includes, but are not limited to, the following:

1. Anthropomorphic Figures—Benin Bronzes come in a variety of anthropomorphic forms, including free standing heads, heads on pedestalled bases, free standing full-length human figures, and full-length human figures on pedestalled bases. Head height varies, typically between 20 cm to 55 cm. Features may be both naturalized and stylized. Heads may have a wide and cylindrical shape, cheeks may be swollen, and eyes may be enlarged. Heads have representations of regalia including tight-fitting collars that do not cover the chin or beaded collars that cover the neck and chin reaching the lower lip. Heads may have caps, conical hats, crowns, elaborate hairstyles, or helmets. Beads may hang above the eyes. Wing-like feathers and/or horizontal bars may project from the side of headgear and crowns.

Full-length Benin bronze figures vary in height, typically between 40 cm and 65 cm. Full-length figures can be free standing or on a pedestalled base. The position is typically asymmetrical as some figures hold side-blown trumpets, staffs, weapons, or other objects. Figures are often adorned with necklaces, bracelets, and caps, elaborate hairstyles, helmets, or other headgear. Male figures often wear skirts/wrappers tied around the waist. Some full-length figures have “cat-whisker” scarification protruding from the mouth. Some are composite figures, such as a full-length figure of a horse and rider.

2. Zoomorphic Figures—Zoomorphic Benin bronze figures include freestanding animals and animals on pedestalled bases, including, birds, fish, horses, leopards, rams, roosters, snakes, and others. They may be stylized and include both whole and partial animal figures. Figures tend to have decorated bodies with feathers, scales, or spots. Some figures may have once been part of decorative architectural elements, including turrets. Height varies, typically from 30 cm to 60 cm. Pedestalled bases may be decorated with braided geometric and organic designs.

3. Ornaments—Benin brass and bronze ornaments include, but are not limited to, altar ornaments/stands, anklets, bells, bracelets, discs, figures, finials, flasks, hip ornaments, horns/trumpets, lamps, masks, miniature crowns, pot stands, rings, stools, staffs, and staff toppers. Ornaments were cast using the lost-wax cast method and tend to be ornately decorated with both high-and low-relief elements. Decorative elements include, but are not limited to, basketweave patterns, chains, incisions, interlocking geometric designs, organic designs, raised knobs or loops, spirals, waves, and others. Decorative forms may include human heads and full-length figures. Some ornaments may incorporate animal designs into the body of the piece with birds, crocodiles, frogs, horses, mudfish, snakes, and other animal designs.

4. Plaques—Benin bronze plaques were cast using the lost-wax method. Plaques come in rectangular, pendant, and pectoral forms. Rectangular plaques tend to be slightly taller than wider, with height varying between 40 cm to 50 cm and width varying between 30 cm to 45 cm. Pendant and pectoral plaques tend to be semicircular. The dimensions of pendant or pectoral plaques vary, typically with a height and width varying between 15 cm to 40 cm. Plaques tend to be ornately decorated with both naturalistic and stylized elements. The backgrounds may have low-relief geometric and organic elements, including circles, dots, flowers, petals, quatrefoils, and other designs. High-relief decorative elements often include a prominent full-length human figure, often flanked by two or more figures that may be smaller in size. Human figures are often adorned in ceremonial dress

including anklets, armor, bracelets, decorated skirts/wrappers and tunics, necklaces, and other objects. Crowns are common on the main figure and have many of the same decorative elements as the Benin bronze memorial heads, such as feathers and horizontal bars protruding from the temple. Some human figures may have facial hair. Smaller figures may carry shields, staffs, trumpets, and other weapons. Other high-relief decorative elements include birds, crocodiles, insects, fish, snakes, trees, and others.

5. Vessels—Benin brass and bronze vessels were cast in bronze using the lost-wax method. Vessels come in many forms, including open and closed forms of bowls, lidded bowls, cups, jars, jugs, lidded jars, and stands. Sizes vary, typically between 7 cm and 40 cm. Vessels are typically elaborately decorated with high- and low-relief elements and with both naturalistic and stylized elements. The vessels' backgrounds may have low-relief geometric and organic elements, including arches, circles, dots, leaves, flowers, interlocking geometric designs, petals, quatrefoils, and other designs. High-relief elements on vessels include human and animal figures such as leopards, frogs, mudfish, snakes, snails, tortoises, and others.

#### *G. Iron*

This category includes iron objects, such as axes, ceremonial currency, ceremonial swords and knives, spears, staffs, swords, and other weapons used in or associated with religious activities, community or ancestral shrines, and/or royal or chiefly activities. Iron implements vary in size, typically between 30 cm and 110 cm in height. Ceremonial swords have fan-shaped blades. Blades may be curved or pointed. Axes and ceremonial currency may have simple or ornate curved blades that were not intended to be used, and may not have been created for a utilitarian purpose. Blades may have dulled edges, and forms are typically more delicate and ornate than utilitarian tools, projectiles, and weapons. While the blades are forged from iron, the hilt, pommel, and grip may be crafted from bone, brass, bronze, copper, ivory, or wood.

#### *H. Stone*

1. Monoliths—Monoliths (*e.g.*, Akwanshi, Cross River, Ejagham, Bakor, and Ikom) are typically carved from basalt, and range in height from 50 cm to 2 m. Monoliths vary and may be carved in either a column or boulder-like form. Monoliths are carved and can have both low- and high-relief elements. Most monoliths represent male figures, but there are also examples of female and animal forms. Some monoliths have well-defined facial features with beards, head-dresses or hairstyles, and they may have complex, linear patterns on

the face and torso. The head and torso of the monolith is often differentiated with a V-shaped groove or ridge. The torso often has a protruding navel.

2. Figures—Stone figures (*e.g.*, Esie soapstone) are usually carved from steatite or soapstone. Soapstone figures come from Yoruba villages, including Esie, Ijara, and Ofaur. Figures feature animals, children, and adult figures, often seated on a stool or kneeling on a circular base. Figures are typically 20 cm to 120 cm in height. Most soapstone figures have elaborate hairstyles, conical headdresses, or helmets. Headdresses and hats may be decorated with chevrons, leaves, rosettes, and/or tassels. Facial features are naturalistic with outlined eyes, flared nostrils, and an elongated bridge on the nose. There may be striations on the face, including on the temple, chin, and/or forehead. Female figures often have three or four marks on the nape of the neck. Figures are typically adorned with necklaces and bracelets. Female figures may be holding swords and males may have quivers with arrows and a helmet with a shape of a bird.

#### *I. Terracotta / Fired Clay*

This category includes ceramic or terracotta vessels, figures, and objects used in or associated with cemeteries, religious activities, community or ancestral shrines, and/or royal or chiefly activities in Dakakari, Edo, Yoruba, and other cultures.

1. Anthropomorphic Figures—Examples include anthropomorphic figures from the Edo cultures, which tend to have both naturalized and stylized characteristics. Height varies, typically between 9 cm and 25 cm. Terracotta ceremonial or commemorative heads share similar characteristics to the anthropomorphic bronze figures described in section I.F.1. of this Designated List. Heads may have a wide and cylindrical shape, cheeks may be swollen, and eyes may be enlarged. Heads include representations of regalia including tight-fitting collars that do not cover the chin to beaded collars that cover the neck and chin reaching the lower lip. Terracotta heads may have caps, conical hats, crowns, elaborate hairstyles, or helmets. Beads or incisions may hang above the eyes. Heads may have a hollow core.

2. Zoomorphic Figures—Examples include zoomorphic figures from the Edo cultures, which tend to have stylized characteristics. Height varies, typically between 9 cm and 25 cm. Edo zoomorphic figures tend to feature singular heads of animals such as leopards, rams, or other animals. Eyes and pupils tend to be incised. Heads may have a hollow core.

3. Funerary Stelae/Figures—Funerary stelae and figures from the Dakakari culture tend to be stylized and include anthropomorphic figures, zoomorphic figures, or composite figures, such as a horse and

rider. Height varies, typically between 30 cm and 50 cm. Anthropomorphic and zoomorphic figures tend to be positioned on top of a bell-shaped or spherical base. Bodies tend to be cylindrical with truncated limbs. Eyes may be represented by linear slits that puncture the terracotta, while the nostrils and mouths may be punctured with more rounded holes. Animal figures tend to have elongated, quadruped limbs.

*J. Wood*

1. Architectural Elements—This category includes doors, door fixtures, houseposts, and veranda posts from religious buildings, including churches and shrines, and royal buildings, which were used in or associated with religious activities, community or ancestral shrines, and/or royal or chiefly activities. Architectural pieces may be ornately carved with high-relief decorations.

2. Ceremonial and Religious Wood—This category includes altar pieces, altar stands, ceremonial bowls, ceremonial boxes, divination trays, divination vessels, drums, gong rasps, masquerade ornaments, missal stands, offering bowls, prayer boards, Qur'an boxes, staffs, staff heads, stools, and other objects used in or associated with religious activities, community or ancestral shrines, and/or royal or chiefly activities.

*K. Rock Art*

Incised, engraved, pecked, or painted drawings on natural rock surfaces. Decoration includes human figures, animal figures (in particular, cattle, sheep, and short horned bulls), and geometric symbols.

**References**

*Dynasty and Divinity: Ife Art in Ancient Nigeria*, 2009, Henry John Drewel and Enid Schildkrout, Getty Foundation with the Museum for African Art, New York.

*Early Art and Architecture of Africa*, 2002, Peter Garlake, Oxford University Press, Oxford.

*From Shrines to Showcases: Masterpieces of Nigerian Art*, 2008, Ekpo Eyo, Ministry of Information and Communication, Abuja.

*Gelede: Art and Female Power Among the Yoruba*, 1983, Henry John Drewal and Margaret Thompson Drewal, Indiana University Press, Bloomington.

*Nok: African Sculpture in Archaeological Context*, 2013, Peter Brunig, Goethe-Universität and Africa Magna Verlag, Frankfurt.



*Sculptures: Africa, Asia, Oceania, Americas*, 2020, Reunion des Musees Nationaux: Musee de quai Branly, Paris.

*The Royal Arts of Africa: The Majesty of Form*, 1998, Suzanne Blier, Callman King; Prentiss Hall, London and New York.

*Treasures of Ancient Nigeria*, 1980, Ekpo Eyo and Frank Willett, Alfred Knopf with the Detroit Institute of Art, New York.

*Yoruba Beadwork: Artwork of Nigeria*, 1980, William Fagg, Rizzoli International Publications, New York.

### **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 under 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, has delegated the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

### **List of Subjects in 19 CFR Part 12**

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

**Amendment to the CBP Regulations**

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

**PART 12—SPECIAL CLASSES OF MERCHANDISE**

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

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

\* \* \* \* \*

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

\* \* \* \* \*

■ 2. In § 12.104g, the table in paragraph (a) is amended by adding an entry for “Nigeria” in alphabetical order to read as follows:

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

(a) \* \* \*

State party	Cultural property	Decision No.
* * *	* * *	* * *
Nigeria .....	Archaeological material of Nigeria ranging from approximately B.C. 1500 to A.D. 1770, and ethnological material of Nigeria ranging from approximately A.D. 200 to the early 20th century A.D.	CBP Dec. 22–05
*	*	*

\* \* \* \* \*

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

Approved:

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

**DEPARTMENT OF THE TREASURY**

**19 CFR PART 12**

**CBP DEC. 22-06**

**IMPOSITION OF IMPORT RESTRICTIONS ON  
CATEGORIES OF ARCHAEOLOGICAL AND  
ETHNOLOGICAL MATERIAL OF ALBANIA**

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

**ACTION:** Final rule.

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

**DATES:** Effective on March 17, 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](mailto: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](mailto: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”), implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter, “the Convention” (823 U.N.T.S. 231 (1972))). Pursuant to the Cultural

Property Implementation Act, the United States entered into a bilateral agreement with the Republic of Albania (Albania) to impose import restrictions on certain archaeological and ethnological material from Albania. This rule announces the imposition of import restrictions on certain archaeological and ethnological material from Albania.

### **Determinations**

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On May 26, 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 required under the statute with respect to certain archaeological and ethnological material originating in Albania that is described in the Designated List set forth below in this document.

These determinations include the following: (1) That Albania's cultural heritage is in jeopardy from pillage of certain types of archaeological material representing Albania's cultural heritage ranging in date from approximately 300,000 B.C. to A.D. 1750, and certain types of ethnological material representing Albania's cultural heritage ranging in date from approximately A.D. 400 to 1913 (19 U.S.C. 2602(a)(1)(A)); (2) that the Albanian government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Acting Assistant Secretary also found that the material described in the determinations meets the statutory definition of "archaeological or ethnological material of the State Party" (19 U.S.C. 2601(2)).

### **The Agreement**

On August 23, 2021, the Governments of the United States and Albania signed a bilateral agreement, "Memorandum of Understanding between the United States of America and the Republic of Albania Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Albania" (hereinafter, "the Agreement"), pursuant to the provisions of 19 U.S.C. 2602(a)(2).

The Agreement entered into force on February 28, 2022, following the exchange of diplomatic notes, and enables the promulgation of import restrictions on certain categories of archaeological material ranging in date from approximately 300,000 B.C. to A.D. 1750, and ethnological material ranging in date from approximately A.D. 400 to 1913. A list of the categories of archaeological and ethnological material subject to the import restrictions is set forth later in this document.

### **Restrictions and Amendment to the Regulations**

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

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the Agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the Agreement still pertain and no cause for suspension of the Agreement exists. The import restrictions will expire on February 28, 2027, unless extended.

### **Designated List of Archaeological and Ethnological Material of Albania**

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

The Designated List includes certain archaeological and ethnological material from Albania. The archaeological material in the Designated List includes archaeological material from the Middle Paleolithic to the Ottoman period, ranging in date from approximately 300,000 B.C. to A.D. 1750. The ethnological material in the Designated List includes ethnological material from the Byzantine, Medieval, and Ottoman periods, ranging in date from approximately A.D. 400 to Albanian independence in 1913. The Designated List is representative only. Any dates and dimensions are approximate.

*Simplified Chronology**Paleolithic*: c. 300,000–10,000 B.C.*Mesolithic*: c. 10,000–6,000 B.C.*Neolithic*: c. 6,000–4500 B.C.*Eneolithic / Chalcolithic / Copper Age*: c.4500–3100 B.C.*Bronze Age*: c. 3100–1000 B.C.*Iron Age*: c. 1000–450 B.C.*Proto-Urban / Urban period*: c. 650–27 B.C.*Roman period*: 27 B.C.–A.D. 395*Byzantine / Medieval period*: A.D. 395–c. 1500*Ottoman period*: c. A.D. 1500–1913**Categories of Archaeological and Ethnological Material****I. Archaeological Material**

- A. Stone
- B. Metal
- C. Ceramic, Clay, and Terracotta
- D. Bone, Ivory, Shell, Wood, and Other Organics
- E. Glass, Faience, and Semi-Precious Stone
- F. Textiles
- G. Leather, Papyrus, and Parchment
- H. Rock Art, Paintings, and Drawings
- I. Mosaics

**II. Ethnological Material**

- A. Architectural Elements
- B. Funerary Objects
- C. Ritual and Ceremonial Objects
- D. Paintings
- E. Written Records
- F. Textiles
- G. Weapons and Armor

**I. Archaeological Material**

Archaeological material covered by the Agreement represents the following periods, styles, and cultures: Paleolithic, Mesolithic, Neolithic, Chalcolithic, Bronze Age, Iron Age, Urban period, Roman period, Byzantine/Medieval period, and Ottoman period.

## A. Stone

### 1. Sculpture

a. Architectural Elements—Primarily in marble, limestone, and gypsum; including blocks from walls, floors, and ceilings; acroteria, antefixes, architrave, water spouts, columns, capitals, bases, lintels, jambs, friezes, pediments, tympanum, metopes, and pilasters; doors, door frames, and window fittings; caryatids, altars, prayer niches (*mihrabs*), screens, wellheads, fountains, mosaics, and tiles. This category also includes relief and inlay sculpture that may have been part of a building, such as friezes of sculptured stone figures set into inlaid stone. May be plain, molded, carved, or inscribed. Decorative motifs may be incised or in high relief.

b. Monuments and Stelae—Types include menhir, votive statues, funerary and votive stelae, bases and base revetments, and carved relief vases and slabs, usually in limestone, marble, or basalt. Common subject matter also includes figural, vegetative, floral, or decorative motifs. These may be painted, carved with relief sculpture, and/or carry dedicatory or funerary inscriptions.

c. Sarcophagi and Ossuaries—In marble and limestone. The sides and lids of sarcophagi and ossuaries may have relief sculptures of human and animal figures, inscriptions, monograms, and floral and geometric decoration.

d. Statuary—Both large and small, in marble, limestone, sandstone, and other stone. Subject matter includes human and animal figures and groups of figures in the round, as well as floral, vegetal and abstract elements, including fragments of statues.

2. Vessels and Containers—In marble, steatite, rock crystal, and other stone. Types include conventional shapes, such as bowls, cups, jars, jugs, and lamps, or may be in the shape of a human or animal, or part of a human or animal.

3. Furniture—In marble and other stone. Types include tables, thrones, beds, funerary furniture, and other burial elements.

4. Tools and Weapons—In flint, chert, obsidian, limestone, and other hard stone. Types include small tools, large and small blades, borers, scrapers, sickles, awls, harpoons, cores, loom weights, and arrow heads. Ground stone types include grinders (*e.g.*, mortars, pestles, millstones, and/or whetstones), choppers, axes, hammers, molds, and mace heads.

5. Seals and Stamps—These are small devices with at least one side engraved with a design for stamping or sealing, often in marble, limestone, and various semiprecious stones, including rock crystal, amethyst, jasper, agate, steatite, and carnelian. Shapes can include cylinders, buttons, and prismatic.

6. Jewelry and Beads—Jewelry made of or decorated with colored and semi-precious stones, including beads, necklaces, pendants, cameos, crowns, earrings, finger rings, bracelets, anklets, belts, girdles, pins, hair ornaments, and arm bands. May be incised or cut as gems or cameos.

*B. Metal*

1. Sculpture

a. Statuary—Large and small statuary, primarily in bronze, including fragments of statues. Subject matter includes human and animal figures, masks, plaques, and groups of figures in the round.

b. Reliefs—In gold, bronze, or lead. Types include plaques, burial masks, leaves, and appliquéés with images of gods, mythical creatures, or other figures.

c. Inscribed or Decorated Sheets—In bronze and lead. Engraved inscriptions, “military diplomas,” “curse tablets,” and thin metal sheets with engraved or impressed designs often used as attachments to furniture.

2. Vessels and Containers—In copper, bronze, gold, and silver. Bronze may be gilded or silver-plated. Types include conventional shapes, such as bowls, cups, jars, jugs, strainers, cauldrons, candelabras, and lamps, or may be in the shape of a human or animal or part of a human or animal.

3. Jewelry and Personal Adornment—In copper, bronze, silver, and gold. Types include earrings, ear caps, pendants, bracelets, necklaces, spiraliform tubes, brooches, torques, belts, belt buckles, belt ends/appliquéés, fibulas with chain pendants, plates, spangles, diadems, pins, dress pins, finger rings, hair rings, chains, spirals, ornaments, beads, mirrors, wreaths, cuffs, and pectoral crosses.

4. Tools—In bronze, iron, lead, and copper. Types include socketed hammers, spearheads, lanceheads, daggers, knives, axes, double axes, hooks, weights, scrapers, trowels, keys, strigils, and other tools of physicians and artisans.

5. Weapons and Armor—In copper, bronze, lead and iron. This category includes common weapon types, such as daggers, arrows, swords, spears, javelins, axes, rapiers, and maces. Body armor is also included, such as helmets, cuirasses, shin guards, shields, horse armor, and chariot decoration. Some may have inscriptions or be otherwise decorated with engraved, embossed, or perforated designs.

6. Seals and Stamps—These are small devices with at least one side engraved with a design for sealing or stamping, often in bronze, copper, gold, silver, tin, or lead. Types include rings, amulets, stamps, and seals with shank.



7. Ship and Boat Material—Parts and fragments from shipwrecks in bronze, lead, and iron, including anchors.

8. Coins—This category includes coins of Illyrian, Greek, Macedonian, Roman provincial, Byzantine, Medieval, and Ottoman types that circulated primarily in Albania, ranging in date from approximately the 6th century B.C. to A.D. 1750. Coins were made in copper, bronze, silver, and gold. Examples are generally round, have writing, and show imagery of animals, buildings, symbols, or royal or imperial figures.

*C. Ceramic, Clay, and Terracotta*

1. Sculpture

a. Architectural Elements—Baked clay (terracotta) elements used to decorate buildings. Elements include tiles, acroteria, antefixes, painted and relief plaques, metopes, cornices, roof tiles, pipes, and revetments, as well as wall and floor decorations in plaster. May be painted as icons.

b. Statuary—Large and small statuary. Subject matter includes human and animal figures and groups of figures in the round, human body parts, shrines, houses, ovens, rhyta, strainers, and chariots. This includes figurines which may be anthropomorphic, zoomorphic, vegetal, furniture-like, schematic, or flat.

2. Vessels—Ceramic types, forms, and decoration vary among archaeological styles over time. Forms may be handmade or produced with ceramic wheels, plain or decorated, and may be glazed, unglazed, slipped, painted, burnished, engraved, and/or incised. They may be produced in Albania or imported at or near the time of production. Some of the most well-known types are highlighted below:

a. Neolithic Pottery—Early Neolithic types include thick-walled, coarse, fine, fine with sand inclusion, red, brown, and black pottery. Decorations, applications, and paint include sandy slip, barbotine, red monochrome, or dark brown paint on red barbotine ware. Middle Neolithic types include gray or black, lustrous, incised, and beaded pottery. Decorations include incised bands filled with dots or lines, incised spiral motifs, or white paint. Late Neolithic types include light yellow ocherous fabric, red ocherous fabric with painted decoration, black ware with incisions and appliqué, brown on light painted, clay mixed with sand, brown with broad lines and triangles, unpolished, net patterns, zig-zag lines, fine, polished, painted, multi-colored, linear-geometric, and spiral pottery. Shapes include globular, spherical, hemispherical, and biconical vessels.

b. Chalcolithic Pottery—This category includes similar types and decorations as described above for earlier periods, with the addition of

thick-walled, thin-walled mixed with sand, gray surface, brown surface, black surface, fine, and gray-black pottery. They may be painted, incised, encrusted, recessed, or in relief, sometimes representing combined techniques. Prominently black monochrome with fluted decoration. Shapes include squat biconical bodies with cylindrical necks and bowls with incurving rims.

c. Bronze Age Pottery—Types include thick-walled and thin-walled vessels, which are black, gray, gray-black, red, light beige, or ocherous yellow, handmade and wheel-made, as well as Mycenaean (Late Helladic) imported wares. Decorations include bands, punctuated plastic bands, incised linear or curvilinear motifs, geometric motifs, horizontal bands with or without holes, finger impressed bands, matte-painted with geometric patterns, applied plastic decoration, monochrome painted motifs, and/or piercing at juncture of rim and handle. Shapes include pots with handles rising above the rim, vessels with wide necks and exaggerated vertical handles, vessels with bulbous bodies, wide necks, and thick lips, cups with handles, piriform cups with handles that rise above the rim, vessels with elbow or axelblade-shaped handles, vessels with wish bone handles, bowls, vessels with wide throats, vessels with horizontal handles, vessels with handle and spout, short open vessels with two handles, and double vessels.

d. Iron Age Pottery—Types include brown, gray, red, black, clean fabric mixed with sand, thin-walled, and smooth surface pottery, both handmade and wheel-made. Decorations include brown matte-painted linear or curvilinear motifs, narrow ribbing, incised geometric patterns, including triangles and concentric bands, and red paint on black glaze. Shapes include vessels with globular bodies and cylindrical or conical necks with vertical handles, jars with globular necks, beaked jugs, spherical vessels, double vessels, vessels with narrow throats, vessels with handles rising above the rim, pots, beaked *oinochoe*, *skyphoi*, *amphorae*, conical bowls with upright or incurving rims, hemispherical bowls, cups with various profiles, chalices, *biphora*, and vessels with four handles.

e. Illyrian, Greek, and Hellenistic Pottery—Types include thin and thick-walled vessels; proto-Corinthian, Corinthian, Attic, Devollian, black-glazed, and other types. Decorations include thick black gloss, as well as Attic and other imported Black Figure and Red Figure vessels, including local imitations of these types. Shapes include *lekythoi* (small, thin-walled jars), large storage *amphorae*, *oinochoe*, *pyxides*, *unguentaria*, *skyphoi*, and others.

f. Roman Pottery—Types include fineware, coarseware, red gloss, red slip, black slip, lead glaze, and others. Shapes include

cooking ware, jars, beakers, bowls, plates, vases, *amphorae*, and others.

g. Byzantine/Medieval Pottery—Types include thin and thick-walled vessels with fine to coarse fabrics, often deep red to purplish with lime inclusions and sandy texture, or dark orange with many lime inclusions and voids. Decorations include red slips, plain glazes, colored glazes, particularly green and silver, sgraffito incised naturalistic, geometric, and figural decoration, painted geometric motifs, including dots, ridge surface treatment, and proto-Maiolica ware. Shapes include *amphorae*, open and closed jugs, large storage vessels with small handles, and shallow plate-like vessels.

h. Ottoman Pottery—Types include thin and thick-walled vessels with fine to coarse fabrics, often deep red to purplish with lime inclusions and sandy texture. Decorations include plain glazes, colored glazes, particularly green and brown, painted glaze, sgraffito incised decoration, painted geometric motif, and Maiolica ware.

3. Objects of Daily Use—This type includes objects of daily use including tools, spindle whorls, weights, and lamps.

4. Inscriptions—These are typically unbaked and should be handled with extreme care, even when hard fired through accidental burning. They typically take the form of tablets, which may be shaped like leaves or may be rectangular or square. In various languages and scripts.

#### *D. Bone, Ivory, Shell, Wood, and Other Organics*

1. Small Statuary and Figurines—This category includes human and animal figures and groups of figures in the round.

2. Personal Ornaments and Objects of Daily Use—In bone, ivory, shell, amber, and other organics. Types include tools, ornaments, beads, amulets, combs, pins, spoons, small containers, bracelets, and buckles.

3. Seals and Stamps—These are small objects with at least one side engraved with a design for stamping or sealing. They may be discoid, cuboid, conoid, or in the shape of animals or mythological creatures.

4. Tools and Weapons—Bone, ivory, and horn were used to produce and decorate weapons and tools. Types include needles, awls, chisels, hoes, picks, knives, spearheads, harpoons, and blades.

5. Human and Animal Remains—Skeletal remains from human and animal bodies, found in burials or preserved in other contexts.

6. Musical Instruments—In bone, ivory, and tortoise shell. Types include pipes and flutes.

7. Inscriptions and Writing—On wood, particularly wooden sticks, ivory, and others. In various languages and scripts.

8. Ship and Boat Material—This includes whole or pieces that compose a ship or boat, including logs, planks, and other fittings.

*E. Glass, Faience, and Semi-Precious Stone*

1. Architectural Elements—This includes glass inlay and tesserae pieces from floor and wall mosaics, mirrors, and windows.

2. Vessels—Types include small jars, bowls, animal shaped containers, goblets, spherical containers, candle holders, and perfume jars (*unguentaria*).

3. Beads and Jewelry—Jewelry such as bracelets and rings, pendants, and beads in various shapes (*e.g.*, circular or globular), may be decorated with symbolic and/or floral reliefs.

*F. Textiles*

This category includes clothing or clothing fragments, carpets, flags or banners, flag bags, wall hangings, blankets, and textiles used during religious practice, and includes objects made from linen, wool, cotton, and silk.

*G. Leather, Papyrus, and Parchment*

1. Leather—This category includes bags, furniture parts, masks, shields, cases and containers for a variety of uses, sandals, clothing, and manuscript covers. There are examples of religious and/or rare books that were written on leather pages.

2. Papyrus—Documents made from papyrus and written upon. These are often rolled and/or fragmentary.

3. Parchment—Writing material made of animal skin and used to produce manuscripts, including religious, liturgical, and scientific works. These may be single leaves or bound as books or scrolls. These may also have illustrations or illuminated paintings with gold and other colors.

*H. Rock Art, Paintings, and Drawing*

1. Rock Art—Types include human-made markings on stone, cave walls, or rocks in open air, and may be carved or painted. The earliest known examples date from approximately 10,000 B.C.

2. Wall Paintings—This category includes paintings from buildings and tombs. Several methods were used, such as wet-fresco and dry-fresco, and the paintings may be applied to plaster, wood, or stone. Types include simple applied color, bands and borders, landscapes, scenes of people and/or animals in natural or built settings, and religious themes. Tomb paintings may depict gods, goddesses, or funerary scenes, and date primarily from the first millennium BC through the 6th century A.D.

3. Panel Painting (Icons)—An icon is a work of art for religious devotion, normally depicting saints, angels, or other religious figures. These are painted on a wooden panel, often for inclusion in a wooden

screen (iconostasis), or else painted onto ceramic panels. May be partially covered with gold or silver, sometimes encrusted with precious or semi-precious stone.

### *I. Mosaics*

Mosaics are a combination of small three-dimensional pieces of colored stone or glass (tesserae) to create motifs, such as geometric shapes, mythological scenes, floral or animal designs, natural motifs, such as landscapes, and depictions of daily chores. These were generally applied to walls, ceilings, or floors.

## **II. Ethnological Material**

Ethnological material covered by the Agreement includes, but is not limited to, architectural elements from historic or religious structures, funerary objects, ritual and ceremonial objects, paintings, written records, textiles, and weapons and armor; all of which contribute to the knowledge of the origins, development, and history of the Albanian people. This includes objects from approximately A.D. 400, starting in the Byzantine period, through the Medieval and Ottoman periods, ending in A.D. 1913, with Albania's independence.

### *A. Architectural Elements*

This category includes architectural elements and decoration from religious and historic buildings in all materials. These buildings have distinctive characteristics described below. Examples of architectural elements covered by the Agreement include, but are not limited to, the following objects:

1. Structural and Decorative Architectural Elements—This category includes material from religious or public buildings in stone, ceramic, plaster, wood, and other organic elements, which includes blocks; columns, capitals, bases, lintels, jambs, friezes, and pilasters; beams, panels, doors, door frames, and window fittings; altars and altar partitions, prayer niches (*mihrab*), circular marking slabs (*omphalion*), screens, iconostases, fountains, ceilings, and carved, molded, or painted brick and tile. Metal elements are primarily in copper, brass, lead, and alloys, and may include doors, door fixtures, lathes, finials, chandeliers, screens, and sheets to protect domes. Glass may be incorporated into either structural or decorative elements. This category also includes relief and inlay sculpture, including appliqués and plaques that may have been part of a building. May be plain, molded, carved, or inscribed. Decorative motifs may be incised or in high relief, and may include religious, floral, human, animal, or other motifs.

2. Mosaics—Wall or floor mosaics generally portray religious images and scenes of biblical events. Surrounding panels may contain

animal, floral, or geometric designs. They are made from stone and glass cut into small pieces (tesserae) and laid into a plaster matrix.

### *B. Funerary Objects*

This category includes objects related to funerary rites and burials in all materials. Examples of funerary objects covered by the Agreement include, but are not limited to, the following objects:

1. Sepulchers—Sepulchers are repositories for human or animal remains, in stone (usually marble or limestone), metal, and wood. Types of burial containers include sarcophagi, caskets, coffins, and chest urns. These may also have associated sculpture in relief or in the round. May be plain or have figural, geometric, or floral motifs, either painted or carved in relief. May also contain human or animal remains.

2. Inscriptions, Memorial Stones, Epitaphs, and Tombstones—This category includes inscribed funerary objects, primarily slabs in marble and ceramic; most frequently engraved with Ottoman Turkish or Greek. These may also have associated sculpture in relief or in the round.

3. Funerary Offerings—This category includes objects in all materials; shrouds and body adornment, such as clothing, jewelry, and accessories; idols, figurines, vessels, beads, weapons, or other ritual or ceremonial offerings; and writing implements, books, and manuscripts.

### *C. Ritual and Ceremonial Objects*

This category includes objects for use in religious services (Christian, Islamic, or other) or by the state (Byzantine Empire, Medieval period rulers, and Ottoman Empire). Examples of ritual and ceremonial objects covered by the Agreement include, but are not limited to, the following objects:

1. Religious Objects—This category includes objects in all materials, such as lamps, libation vessels, patens, pitchers, chalices, plates, censers, candelabra, crosses and cross pendants, pilgrim flasks, tabernacles, boxes and chests, carved diptychs, triptychs, plaques and appliqués, cast metal icons, liturgical spoons, ecclesiastic crowns, bells, ampoules, prayer beads, icons, amulets, *Bektashi* surrender stones, and *Qu'ran* study tablets. This type also includes reliquaries and reliquary containers, which may or may not include human remains. Objects are often engraved, inscribed, inlaid, or otherwise decorated with semi-precious or precious stones.

2. State Ceremonial Objects—This category includes objects in all materials. Examples include ceremonial garments, clothing emblematic of state or imperial position and accessories thereof (such as

shoes, headdresses and hats, belts, and jewelry); objects of state office (such as scepters, staffs, insignia, relics, and monumental boxes, trays, and containers); flags, flagstaves, and *alem* (finials); stamps, seals, and writing implements for official use by the state; tapestries, or other representations of the court; and musical instruments.

3. Furniture—This category includes objects primarily in stone or wood, including altars, tables, platforms, pulpits, fonts, screens, thrones, *minbar*, lecterns, desks, and other types of furniture used for religious or official state purpose.

4. Musical Instruments—This category includes instruments important for religious or state ceremonies, such as drums of various sizes in leather (*e.g.*, *bendir* drums used in Sufi rituals, wedding processions, and *Mal'uf* performances), metal instruments, such as cymbals and trumpets, and wooden instruments.

#### D. Paintings

This category includes works of paint on plaster, wood, or ceramic, from religious or historic contexts. Paintings from these periods provide information on the social and religious history of the people of Albania that may be absent from written records. Examples of paintings include, but are not limited to:

1. Wall paintings—This category includes paintings on various types of plaster, which generally portray religious images and/or scenes of biblical events. Types may also include simple applied color, bands and borders, and animal, floral, and geometric motifs.

2. Panel Paintings (Icons)—An icon is a work of art for religious devotion, normally depicting saints, angels, or other religious figures. These are painted on a wooden panel, often for inclusion in a wooden screen (iconostasis), or else painted onto ceramic panels. May be partially covered with gold and/or silver, sometimes encrusted with precious or semi-precious stone.

3. Works on Leather and Paper—Paintings may be on leather, parchment, or paper. Images depicted may include, among other themes, courtly themes (*e.g.*, rulers, musicians, or riders on horses) and city views.

#### E. Written Records

This category includes written records of religious, ritual, ceremonial, political, or scientific importance, including, but not limited to, works on papyrus, vellum or parchment, paper, or leather. Papyrus documents are often rolled and/or fragmentary. Parchment and paper documents may be single leaves or bound as scrolls or books. They may have illustrations or illuminated paintings with gold or other colors, or be otherwise embellished with colorful floral or geometric

motifs. There are also examples of Korans (*Qur'ans*) and other religious and/or rare books written on leather pages. This category also includes boxes for books or scrolls made of wood or other organic materials and book or manuscript covers made of leather, textile, or metal.

#### *F. Textiles*

1. Traditional Clothing—Traditional Albanian folk clothing including headdresses (*qeleshe*, *pils*, Albanian hat, *qylafë*, *kapica*, *langi*, *lëvere*, *kryqe*), pants and upper body covers (*fustanella*, *tirq*, *brekusha*, *xhubleta*, *mbështjellëse*), vests (*xhamadan*), belts (*brez*), socks (*çorape*), and shoes (*opinga*).

2. Religious Vestments and Textiles—In linen, silk, and wool. This category includes religious textiles and fragments from mosques, churches, shrines, tombs, and monuments, including garments, hangings, prayer rugs, and shrine covers, as well as robes, vestments and altar clothes that are often embroidered in silver and gold. Embroidered designs include religious motifs and floral and geometric designs.

#### *G. Weapons and Armor*

This category includes weapons and armor in all materials. This includes daggers, swords, saifs, scimitars, other blades, with or without sheaths, as well as spears, firearms, and cannons. These may be inlaid with gemstones, embellished with silver or gold, or engraved with floral or geometric motifs and inscriptions. Grips or hilts may be made of metal, wood, and/or semi-precious stones, such as agate, and bound with leather. Armor consists of small metal scales, originally sewn to a backing of cloth or leather, and augmented by helmets, body armor, shields, and horse armor.

### **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 under 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, has delegated the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

**List of Subjects in 19 CFR Part 12**

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

**Amendment to CBP Regulations**

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

**PART 12—SPECIAL CLASSES OF MERCHANDISE**

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

(a) \* \* \*

State party	Cultural property	Decision No.
Albania.....	Archaeological material of Albania ranging in date from approximately 300,000 B.C. to A.D. 1750, and ethnological material of Albania ranging in date from approximately A.D. 400 to 1913.	CBP Dec. 22-06.
*	*	*

\* \* \* \* \*

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.*

[Published in the Federal Register, March 17, 2022 (85 FR 15079)]



**APPLICATION TO USE AUTOMATED COMMERCIAL ENVIRONMENT (ACE)**

**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 April 13, 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](http://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](mailto: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 63037) on November 15, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Application to use Automated Commercial Environment (ACE).

**OMB Number:** 1651-0105.

**Form Number:** N/A.

**Current Actions:** Revision of an existing collection of information.

**Type of Review:** Revision.

**Affected Public:** Businesses.

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

To establish an ACE Portal account, participants submit information such as their name, their employer identification number (EIN) or social security number (SSN), and if applicable, a statement certifying their capability to connect to the internet. This information is submitted through the ACE Secure Data Portal which is accessible at: <http://www.cbp.gov/trade/automated>.

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

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

## **Proposed Changes**

### *1. New ACE Account Type*

CBP is creating a new ACE Account type for ACE Import Trade Carriers and their designees. This new account type, Vessel Agency, enables users to file vessel entrance, clearance, and related data to CBP electronically through the new Vessel Entrance and Clearance System (VECS).

The ACE Account Application will be changed to collect identifying information such as name, employer identification number (EIN),

company address, and phone numbers, to be used to setup the Vessel Agency accounts. Users who create a Vessel Agency Account are automatically enrolled into the VECS public pilot.

## 2. *Removing ACE Account Types*

In a separate action, unrelated to the Vessel Agency account type creation, CBP will also be removing account types “Cartman” and “Lighterman” from the ACE Account Application. These account types were never used and are being removed due to that lack of use.

*Type of Information Collection:* Application to ACE (Import).

**Estimated Number of Respondents:** 21,571.

**Estimated Number of Annual Responses per Respondent:** 1.

**Estimated Number of Total Annual Responses:** 21,571.

**Estimated Time per Response:** 20 minutes (0.33 hours).

**Estimated Total Annual Burden Hours:** 7,118.

*Type of Information Collection:* Application to ACE (Export).

**Estimated Number of Respondents:** 9,000.

**Estimated Number of Annual Responses per Respondent:** 1.

**Estimated Number of Total Annual Responses:** 9,000.

**Estimated Time per Response:** 4 minutes (0.066 hours).

**Estimated Total Annual Burden Hours:** 594.

*Type of Information Collection:* Application to Establish an ACE Protest Filer Account.

**Estimated Number of Respondents:** 3,750.

**Estimated Number of Annual Responses per Respondent:** 1.

**Estimated Number of Total Annual Responses:** 3,750.

**Estimated Time per Response:** 4 minutes (0.066 hours).

**Estimated Total Annual Burden Hours:** 248.

Dated: March 9, 2022.

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

## VESSEL ENTRANCE OR CLEARANCE STATEMENT

**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 April 13, 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](http://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](mailto: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 63036) on November 15, 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:** Vessel Entrance or Clearance Statement.

**OMB Number:** 1651-0019.

**Form Number:** CBP Form 1300.

**Current Actions:** Revision of an existing information collection.

**Type of Review:** Revision.

**Affected Public:** Businesses.

**Abstract:** CBP Form 1300, Vessel Entrance or Clearance Statement, is used to collect essential commercial vessel data at time of formal entrance and clearance in U.S. ports, allows the master to attest to the truthfulness of all CBP forms associated with the manifest package, and collects relevant information about the vessel and cargo. The form was developed through agreement by the United Nations Intergovernmental Maritime Organization (IMO) in conjunction with the United States and various other countries. The form was developed as a single form to replace the numerous other forms used by various countries for the entrance and clearance of vessels. CBP Form 1300 is authorized by 19 U.S.C. 1431, 1433, and 1434, and provided for by 19 CFR 4.

This form is accessible at <http://www.cbp.gov/newsroom/publications/forms?title=1300&=Apply>.

This form is currently submitted in paper format and is anticipated to be submitted electronically as part of CBP's efforts to automate maritime forms through the Vessel Entrance and Clearance System (VECS), which will reduce the need for paper submission of any vessel entrance or clearance requirements under the above referenced statutes and regulations. VECS will still collect and maintain

the same data as CBP Form 1300 but will automate the capture of data to reduce or eliminate redundancy with other data collected by CBP.

*Proposed Changes:*

1. *New ACE Account Type:* CBP is adding a new ACE Account type for Vessel Agencies: The Vessel Agency Portal Account. The new account type within ACE will operate as a portal to the Vessel Entrance and Clearance System (VECS), which will run as its own separate system.

Vessel Agents will be required to provide identifying information such as; their name, their employer identification number (EIN), company address, and their phone numbers, which will be requested at the time Vessel Agents apply for the new ACE account type.

After creating an ACE account, Vessel Agencies, Vessel Operating Common Carriers (VOCCs), and their designees maybe able to use the new Vessel Entrance and Clearance System (VECS) as part of a forthcoming pilot program to test the functionality of VECS, and will be able to file vessel entrance, clearance, and related data to CBP electronically.

2. *VECS Public Pilot:* VECS will automate and digitize the collection and processing of the data and filing requirements for which the CBP Form 1300 is used. CBP plans to run an initial public pilot to test the system. All users who obtained a Vessel Agency Account through the ACE Portal will be automatically enrolled into the VECS public pilot. Initially, the pilot will begin at one of several ports where VECS has been internally tested. CBP will provide training to each CBP port and the Vessel Agency personnel at each port, prior to beginning/expanding the public pilot in another port.

The VECS public pilot will expand to other internal CBP testing ports based on knowledge and familiarity with the system. The VECS public pilot will continue to expand to additional ports, in an effort to progressively test and implement the system nationwide. There will be no change to the paper format of CBP Form 1300, and CBP Form 1300 in paper format will continue to be accepted.

*Type of Information Collection:* Vessel Entrance or Clearance Statement (CBP Form 1300).

**Estimated Number of Respondents:** 2,624.

**Estimated Number of Annual Responses per Respondent:** 72.

**Estimated Number of Total Annual Responses:** 188,928.

**Estimated Time per Response:** 30 minutes (0.5 hours).

**Estimated Total Annual Burden Hours:** 94,464.



Dated: March 9, 2022.

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

[Published in the Federal Register, March 14, 2022 (85 FR 14278)]

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**COMMERCIAL CUSTOMS OPERATIONS ADVISORY  
COMMITTEE (COAC); MEETING**

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

**ACTION:** Committee management; notice of Federal Advisory Committee meeting.

**SUMMARY:** The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Thursday, March 31, 2022. The meeting will be open to the public via webinar only. There is no on-site, in-person option for the public to attend this quarterly meeting.

**DATES:** The COAC will meet on Thursday, March 31, 2022, from 1:00 p.m. to 5:00 p.m. EDT. Please note that the meeting may close early if the committee has completed its business. Comments must be submitted in writing no later than March 28, 2022.

**ADDRESSES:** The meeting will be open to the public via webinar. The webinar link and conference number will be provided to all registrants by 5:00 p.m. EDT on March 30, 2022. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344-1440 as soon as possible. Submit electronic comments and other data to [www.regulations.gov](http://www.regulations.gov) or by email at [tradeevents@cbp.dhs.gov](mailto:tradeevents@cbp.dhs.gov). See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Ms. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; or Ms. Valarie M. Neuhart, Designated Federal Officer at (202) 344-1440.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the authority of the Federal Advisory Committee Act, 5 U.S.C. Appendix. The Commercial Customs Operations Advisory

Committee (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

*Pre-registration:* For members of the public who plan to participate in the webinar, please register online at <https://teregistration.cbp.gov/index.asp?w=246> by 5:00 p.m. EDT by March 30, 2022. For members of the public who are pre-registered to attend the meeting via webinar and later need to cancel, please do so by 5:00 p.m. EDT March 30, 2022, utilizing the following link: <https://teregistration.cbp.gov/cancel.asp?w=246>.

Please feel free to share this information with other interested members of your organization or association.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below.

Comments must be submitted in writing no later than March 28, 2022, and must be identified by Docket No. USCBP–2022–0010, and may be submitted by one (1) of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [tradeevents@cbp.dhs.gov](mailto:tradeevents@cbp.dhs.gov). Include the docket number in the subject line of the message.

*Instructions:* All submissions received must include the words “Department of Homeland Security” and the docket number for this action. *Docket:* For access to the docket, go to <http://www.regulations.gov> and search for Docket Number USCBP–2022–0010. To submit a comment, click the “Comment Now!” button located on the top-right hand side of the docket page.

All comments received will be posted without change to <https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings>, including any personal information provided.

There will be multiple public comment periods held during the meeting on March 31, 2022. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page: <http://www.cbp.gov/trade/stakeholder-engagement/coac>.

## Agenda

The COAC will hear from the current subcommittees on the topics listed below:

1. The Rapid Response Subcommittee will share details regarding the formation of the Domestic Manufacturing and Production Working Group and provide an update on the progress and plans of the Broker Modernization Working Group.

2. The Intelligent Enforcement Subcommittee will provide updates on the progress and plans on the following: The Bond Working Group will provide the overall status; the Antidumping/Countervailing Duty Working Group will provide updates regarding the progress and plans for the group; the Intellectual Property Rights Process Modernization Working Group will provide an update on the status of the group and discuss potential next steps; and the Forced Labor Working Group will provide status updates and the plans for the 16th Term of COAC.

3. The Next Generation Facilitation Subcommittee will provide an update on the progress of the 21st Century Customs Framework and E-Commerce Task Forces; the One U.S. Government Working Group will provide an update on upcoming work; the Re-Imagined Entry Processes Working Group has undergone a name change and will be known as the ACE 2.0 Working Group. The working group plans to conduct an in-depth gap analysis of processes to be improved included in the ACE 2.0 modernization.

4. The Secure Trade Lanes Subcommittee will provide an update on the status of the Customs Trade Partnership Against Terrorism (CTPAT), export modernization, in-bond modernization, and cargo operations.

Meeting materials will be available by March 22, 2022, at: <http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings>.

Dated: March 9, 2022.

VALARIE M. NEUHART,  
*Deputy Executive Director,*  
*Office of Trade Relations.*

[Published in the Federal Register, March 15, 2022 (85 FR 14547)]

## CBP HIRING CENTER MEDICAL RECORDS RELEASE PRIVACY ACT FORM

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

**ACTION:** 60-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 May 16, 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 1651-0NEW 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:** CBP Hiring Center Medical Records Release Privacy Act Form.

**OMB Number:** 1651-0NEW.

**Form Number:** N/A.

**Current Actions:** This is a new information collection.

**Type of Review:** New.

**Affected Public:** Individuals.

**Abstract:** In accordance with 5 CFR 339.301, Customs and Border Protection (CBP) performs pre-employment medical evaluations on all candidates tentatively selected to fill positions that include a medical requirement, such as the CBP Officer and Border Patrol Agent positions. During that evaluation process, CBP collects medically relevant information about the candidate from: The candidate, CBP's contracted medical providers, and/or the candidate's personal medical and mental health providers.

In accordance with 5 CFR 339.305, CBP makes all medical documentation and records of examination available to the candidates. Candidates can request copies of their pre-employment medical examination results and supporting documentation/records by email or letter. Due to the sensitive nature of the information being released, CBP requires that candidates complete and sign a privacy release authorization form in order to receive a copy of their medical documents. CBP will only share medical information directly with the candidate, or with a third party when authorized to do so in writing by the candidate.

No specific information is needed to request copies of candidates' medical documents in writing. When completing the release form, candidates must provide the following information: Full name, partial Social Security Number (SSN#), Date of Birth, Current Address,

Email Address, Phone Number; as well as specifying the type of medical records to be released (hearing test results, vision test results, etc.).

This information is used by CBP as confirmation that the agency has the candidate's signed authorization to provide medically related records about the candidate. A copy of that signed authorization and the records released are retained within the candidate's pre-employment file.

*Type of Information Collection:* Medical Records Release Privacy Act Form.

**Estimated Number of Respondents:** 104.

**Estimated Number of Annual Responses per Respondent:** 2.

**Estimated Number of Total Annual Responses:** 208.

**Estimated Time per Response:** 15 minutes.

**Estimated Total Annual Burden Hours:** 52 hours.

Dated: March 10, 2022.

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

[Published in the Federal Register, March 16, 2022 (85 FR 14902)]

**ENHANCED TRANSPARENCY AND ACCESS TO  
INFORMATION FOR DEBTORS AND SURETIES IN THE  
AUTOMATED COMMERCIAL ENVIRONMENT**

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

**ACTION:** General notice.

**SUMMARY:** This document announces that U.S. Customs and Border Protection (CBP) is making three enhancements to CBP's debt management processes to increase transparency and access to information for debtors and sureties. One of the enhancements will support importers of record, licensed customs brokers, and other Automated Commercial Environment (ACE) account users who owe debts to CBP by enabling the electronic viewing of bill sanction status and protest details in the unpaid, open bill details report in ACE. The other two enhancements will facilitate compliance for sureties by providing electronic access to the monthly report listing open delinquent bills by importer name (*i.e.*, the Formal Demand on Surety for Payment of Delinquent Amounts Due, also informally referred to as

the 612 Report) in ACE (in lieu of CBP emailing this information to sureties) and improving the content and design of the mailed 612 Report.

**DATES:** On March 21, 2022, CBP will deploy updates to enable the electronic viewing of bill sanction status and protest details in the unpaid, open bill details report in ACE. Additionally, on May 1, 2022, sureties may begin to view the electronic 612 Report in ACE (in lieu of CBP emailing this information to sureties) and CBP will transition to the updated mailed 612 Report.

**ADDRESSES:** Comments concerning this notice may be submitted at any time via email to the ACE Collections Team, Investment Analysis Office, Office of Finance, U.S. Customs and Border Protection, at [ACECollections@cbp.dhs.gov](mailto:ACECollections@cbp.dhs.gov), with a subject line identifier reading “ACE Collections Debt Management Release.”

**FOR FURTHER INFORMATION CONTACT:** Steven J. Grayson, Program Manager, Investment Analysis Office, Office of Finance, U.S. Customs and Border Protection, at (202) 579-4400, or [steven.j.grayson@cbp.dhs.gov](mailto:steven.j.grayson@cbp.dhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### I. Background

#### *A. Ongoing Modernization of the Collections System at U.S. Customs and Border Protection*

U.S. Customs and Border Protection (CBP) is modernizing its collections system, allowing CBP to eventually retire the Automated Commercial System (ACS) and transfer all collections processes into the Automated Commercial Environment (ACE). This modernization effort, known as ACE Collections, includes the consolidation of the entire collections system into the ACE framework, which will enable CBP to utilize trade data from ACE modules, benefitting both the trade community and CBP with more streamlined and better automated payment processes. The new collections system in ACE will reduce costs for CBP, create a common framework that aligns with other initiatives to reduce manual collection processes, and provide additional flexibility to allow for future technological enhancements. ACE Collections will also provide the public with more streamlined and better automated payment processes with CBP, including better visibility into data regarding specific transactions.

ACE Collections supports the goals of the Customs Modernization Act (Pub. L. 103-182, 107 Stat. 2057, 2170, December 8, 1993, Title VI of the North American Free Trade Agreement Implementation

Act), of modernizing the business processes that are essential to securing U.S. borders, speeding up the flow of legitimate shipments, and targeting illicit goods that require scrutiny. ACE Collections also fulfills the objectives of Executive Order 13659 (79 FR 10655, February 25, 2014), to provide the trade community with an integrated CBP trade system that facilitates trade, from entry of goods to receipt of duties, taxes, and fees.

CBP is implementing ACE Collections through phased releases in ACE. Release 1, which was deployed on September 7, 2019, dealt with statements integration, the collections information repository (CIR) framework, and ACH (automated clearinghouse) processing. *See* 84 FR 46749 and 84 FR 46678 (September 5, 2019), and 84 FR 49650 (September 23, 2019). Release 2 was deployed on February 5, 2021, and focused on non-ACH electronic receivables and collections, for Fedwire and *Pay.gov*, that included user fees, Harbor Maintenance Fee (HMF), and Seized Assets and Case Tracking System (SEACATS) payments. All of the changes in Release 2 were internal to CBP and did not affect the trade community. Release 3 was deployed on May 1, 2021, and primarily implemented technical changes to the liquidation process, and deferred tax bills, that were internal to CBP. Release 3 also harmonized the determination of the due date for deferred tax payments with the entry summary date, streamlined the collections system, and provided importers of record with more flexibility and access to data when making deferred payments of internal revenue taxes owed on distilled spirits, wines, and beer imported into the United States. *See* 86 FR 22696 (April 29, 2021). Release 4 was deployed on October 18, 2021, and primarily implemented technical changes to the production and management of the internal CBP processes for supplemental bills, certain reimbursable bills, and non-reimbursable/miscellaneous bills issued by CBP to the public. *See* 86 FR 56968 (October 13, 2021). Release 4 also made available to importers of record, licensed customs brokers, and other ACE account users, an option to electronically view certain, unpaid, open bill details as reports in ACE Reports and adopted a new, enhanced format for the CBP Bill Form. *See id.*

As explained more fully below, Release 5 will be deployed on March 21, 2022, with delayed implementation for the enhancements concerning the Formal Demand on Surety for Payment of Delinquent Amounts Due (also informally referred to as the 612 Report) until May 1, 2022. Release 5 focuses on debt management processes, and it includes mainly internal, technical changes to the production, tracking, and management of overdue bills and delinquent accounts and the bonds associated with them. Release 5 also includes enhance-



ments that improve transparency and access to information through ACE for importers of record, licensed customs brokers, and other ACE account users who owe debts to CBP, as well as for the sureties who guarantee the bonds to secure the payment of the debts, if applicable. Additional releases for ACE Collections will follow, and any further changes affecting the public will be announced by notice in the **Federal Register**, as needed.

*B. Overview of CBP's Debt Management Processes Affected by Release 5 of ACE Collections*

CBP is authorized to collect duties, taxes, and fees from customs activities. *See generally* 19 U.S.C. 58a, 58b, 58b–1, 58c, 1505; 26 U.S.C. 4461. The regulations found in part 24 of title 19 of the Code of Federal Regulations (CFR) address the financial and accounting procedures for when CBP collects the duties, taxes, fees, interest, and other applicable charges from the public due to customs activities. *See generally* 19 CFR 24.1 through 24.36. Members of the public are informed of existing debts to CBP through the physical mailing of the CBP Bill Form, the data elements of which are also available for electronic viewing in ACE Reports.

CBP is authorized to require such bonds or other security as deemed necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction. *See* 19 U.S.C. 1623. The regulations concerning such bonds are set forth generally in part 113 of title 19 of the CFR, which addresses bond approval and execution, bond conditions, general and special bond requirements, etc. Bonds are required for a large percentage of the activities for which CBP produces bills. *See* 19 CFR 113.61 through 113.75. For example, CBP requires bonds for the importation of merchandise (19 CFR 113.62), accelerated payment of drawback refunds (19 CFR 113.65), and operation of a foreign trade zone (19 CFR 113.73).<sup>1</sup>

CBP recognizes bonds and the parties to those bonds, who are the principals and sureties, through the filing of a CBP Bond (CBP Form 301) and its addendums.<sup>2</sup> Bond information may be filed electronically, pursuant to 19 U.S.C. 1623(b), via any CBP authorized electronic data interchange (EDI) system. CBP currently accepts the electronic filing of bonds through the eBond test program, 79 FR 70881 (Nov. 28, 2014) and 80 FR 899 (Jan. 7, 2015), which was most recently extended in a **Federal Register** notice, 83 FR 12403, on

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<sup>1</sup> In certain circumstances, bond requirements can be waived. *See, e.g.*, 19 CFR 10.31(f), 10.101(d), 142.4(c).

<sup>2</sup> A copy of CBP Form 301 and its addendums may be viewed online at <https://www.cbp.gov/trade/priority-issues/revenue/bonds>.

March 21, 2018.<sup>3</sup> When a debtor/bond principal fails to pay a debt owed to CBP that is secured by a bond, CBP may seek to collect from the surety (and any other co-sureties or liable parties) under the bond. *See, e.g.*, 19 CFR 113.3 and 144.2. Additionally, the bond principal(s) and the surety(ies) are jointly and severally liable to CBP, as set forth in the bond conditions. *See* 19 CFR part 113, subpart G.

CBP's debt management processes begin when a debt becomes delinquent, and then involves incrementally escalating consequences when a debtor/bond principal does not make full payment. Generally, a debtor/bond principal has 30 days to make payment after the "bill date" (also known as the "date of issuance of the bill"), appearing on the CBP Bill Form, before the bill "due date" (also known as the "late payment date"). 19 CFR 24.3(e). On the 31st day after the bill date, the bill is considered delinquent, and interest will accrue in 30-day increments. 19 U.S.C. 1505(d); 19 CFR 24.3a. Thirty (30) days after the bill due date (60 days after the bill date), CBP will list the bill for the first time on the Formal Demand on Surety for Payment of Delinquent Amounts Due (also informally referred to as the 612 Report, which is a monthly report listing open delinquent bills by importer name) to the sureties (and any co-sureties) recognized on the bond that secures the delinquent debt. 19 CFR 24.3a(d)(2)(i). The elements that normally appear in the 612 Report are prescribed in 19 CFR 24.3a(d)(2).

Generally, CBP will mail the debtor/bond principal a dunning letter if the debt remains unpaid for 120 days after the bill date (90 days after the bill due date). The dunning letter warns of further consequences if the bill remains unpaid, such as the imposition of national sanction, informs about protest rights, and provides the recipient with another copy of the details of outstanding debts owed, for which a dunning letter has not been sent before.

Generally, if a debt continues to remain unpaid by the debtor/bond principal, CBP will email the sureties on the applicable bond a surety demand follow-up letter that seeks payment of all overdue debt secured by a bond. In addition, the debtor/bond principal may be subject to additional consequences, such as a requirement to file the entry summary with payment of estimated duties, taxes, and fees attached before CBP will release new entries (informally referred to as importer sanction or national sanction).<sup>4</sup> *See, e.g.*, 19 CFR 142.13,

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<sup>3</sup> Only a surety or a surety agent may submit an eBond, and additional information about the eBond test program and how to participate may be found online at <https://www.cbp.gov/trade/priority-issues/revenue/bonds/ebond>.

<sup>4</sup> Additional information on the potential consequences for the debtor/bond principal may be found online at <https://www.cbp.gov/trade/priority-issues/revenue/bill-payments/importer-sanctions>.

142.14, 142.26. Ultimately, CBP may take further actions against the surety and/or the debtor/bond principal in an effort to collect the unpaid debt. It should be noted that, under certain circumstances, the debtor/bond principal and/or surety may file an administrative protest of certain decisions by CBP, including the issuance of and basis for certain bills. *See* 19 U.S.C. 1514, 1515. CBP's regulations governing administrative protests may be found at 19 CFR part 174. The timely filing of an administrative protest may alter CBP's debt management approach that is generally described in the preceding paragraphs.<sup>5</sup>

Altogether, CBP's debt management processes often entail numerous mailings and deadlines for CBP and the trading public. CBP has thus developed new tools to automate, streamline, and simplify the processes for debt collection and protest tracking as part of Release 5. The resulting benefits to the public that are announced in this document will be deployed and implemented on March 21, 2022, with delayed implementation for the enhancements concerning the 612 Report until May 1, 2022.

## **II. Enhancements to the Debt Management Processes**

Additionally, CBP is announcing three enhancements to the debt management processes to increase transparency and access to information for the public as part of Release 5. One of the enhancements will support importers of record, licensed customs brokers, and other ACE account users who owe debts to CBP by enabling the electronic viewing of whether a bill has caused consequences under 19 CFR 142.13, 142.14, and 142.26 (informally referred to as bill sanction status or sanction status) and protest details in the unpaid, open bill details report in ACE. The other two enhancements will facilitate compliance for sureties by providing electronic access to the 612 Report in ACE (in lieu of CBP emailing this information to sureties) and improving the content and design of the 612 Report.

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<sup>5</sup> Generally, within 180 days of liquidation or other protestable decision made by CBP, the surety or debtor/bond principal may file a protest against that decision. Sureties may also file a protest within 180 days of the date of mailing of the first 612 Report concerning the specific bill or unsatisfied legal claim secured by the surety bond. An administrative protest must be made on CBP Form 19 and may be filed in paper or electronically in ACE. Under certain circumstances, the protesting party may seek further review of a protest. Following the filing of a protest, CBP will review and respond. *See* subpart C of 19 CFR 174.

*A. Supplementation of Unpaid, Open Bill Details in ACE Reports To Enable Electronic Viewing of Sanction Status and Protest Details for Importers of Record, Licensed Customs Brokers, and Other ACE Account Users Who Owe Debts to CBP*

CBP sends physical bills on the CBP Bill Form<sup>6</sup> via mail to officially notify individuals and entities of amounts owed for duties, taxes, fees, and other charges. Upon the deployment of Release 4 on October 18, 2021, ACE account users were able to electronically view the data elements appearing on the CBP Bill Form in ACE Reports for certain categories of unpaid, open bills. 86 FR 56968 (October 13, 2021). The unpaid, open bill details report in ACE Reports provides an ACE account user with a consolidated, electronic report to track its open bills for which payment is owed to CBP. As part of Release 5, CBP is supplementing the unpaid, open bill details report in ACE Reports with new information applicable to sanction status and protest details for each bill appearing on the report.

Specifically, the new report information includes five data elements. The first data element is an indicator as to whether the unpaid, open bill has put the account holder on national sanction. The other four data elements are details related to administrative protests filed pursuant to 19 CFR part 174. If an administrative protest is associated with an open, unpaid bill, then the following data elements will be included in the report: The protest number, the date of filing of the protest, the processing status of the protest, and the date of CBP's decision on the protest (if applicable). All of the new data elements will be included in additional columns added to the unpaid, open bill details report in ACE Reports and will be updated within one business day after the initial processing of sanction status and/or the relevant administrative protest information. It is important to note that any mailed or electronically communicated information provided by CBP regarding the sanction status and protest details may supersede the information appearing in ACE Reports.

Only members of the public who have an ACE Portal account can view their unpaid, open bill details report in ACE Reports, which will include the new information applicable to sanction status and protest details as of March 21, 2022. CBP encourages affected members of the public (including, but not limited to, importers of record and licensed customs brokers) who do not already have an ACE Portal account to apply for access to be able to view the necessary data to make timely

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<sup>6</sup> As CBP advised in the **Federal Register** notice that announced Release 4, the CBP Bill Form for physical bills will remain the primary source of legal notice of monies owed due to customs activity, as required by 19 CFR 24.3(a).

bill payments.<sup>7</sup> CBP will provide any needed support for setting up ACE Portal accounts. The public may access the ACE Reports application through the ACE Secure Data Portal at <https://ace.cbp.dhs.gov>.<sup>8</sup> Within ACE Reports, ACE account users may navigate to and access their unpaid, open bill details reports in the Workspace Module.<sup>9</sup>

## *B. Benefits for Sureties*

### *1. Availability of an Option for Sureties to Electronically View 612 Reports in ACE*

Currently, CBP mails to sureties the 612 Reports, which are a monthly listing of open delinquent bills by importer name.<sup>10</sup> The 612 Reports constitute the Formal Demand on Surety for Payment of Delinquent Amounts Due, as required by 19 CFR 24.3a(d)(2). Each 612 Report contains certain information, such as the bill number and principal amount due, to allow sureties to identify and track their obligations. *Id.* In addition to mailing 612 Reports, CBP makes available to sureties the ability to request and receive via email a downloadable copy of the raw data underlying the most recent 612 Report sent to them by mail.

As part of Release 5, CBP will make available to sureties an option to electronically view 612 Reports in ACE (in lieu of CBP emailing this information to sureties).<sup>11</sup> This new option will, *inter alia*, reduce the amount of time sureties spend manually identifying and tracking their obligations to CBP, and will allow sureties to access their report

<sup>7</sup> The step-by-step instructions to apply for an ACE Portal account are available online at <https://www.cbp.gov/trade/automated/getting-started/portal-applying>.

<sup>8</sup> For more information about accessing, navigating, and personalizing ACE Reports, please review the ACE Reports Trainings online at <https://www.cbp.gov/trade/ace/training-and-reference-guides>.

<sup>9</sup> The Workspace Module is a window in ACE Reports that provides ACE account users access to their standard reports categorized by subject area (such as Cargo Release, Entry Summary, Manifest, etc.) and includes a navigation list (a folder structure of standard reports) and a viewer that displays the report selected. For additional information about the Workspace Module, please consult the specific ACE Report training at <https://www.cbp.gov/trade/ace/training-and-reference-guides> or the quick reference card at <https://www.cbp.gov/document/guidance/ace-reports-qrc-navigating-workspace-module>.

<sup>10</sup> A new bill entry is added to a 612 Report when a bill owed to CBP has not been paid and is more than 30 days past due (approximately 60 days after the initial bill date). CBP generates and mails the 612 Report to the surety at the beginning of every month, and each bill listed will remain on the 612 Report until that bill is paid or otherwise closed. 19 CFR 24.3a(d)(2)(i).

<sup>11</sup> CBP will discontinue the option for sureties to request, through CBP's Office of Finance, Revenue Division, the regular emailing of 612 Report data packets, as of May 1, 2022. The downloadable data packets are a function of ACS, which will become obsolete, and the existence of the option to electronically view 612 Reports supersedes the emailing of data packets (as the same information will be downloadable from ACE).

at any time of the month, eliminating the constraint of having access to the data the first day it is generated. Moreover, this new option will significantly reduce the current burden on CBP associated with the emailing of the 612 Reports to the respective sureties. The default data presented in the electronic 612 Report will be for the most recent month's mailed 612 Report. Sureties will also be able to view data from, at a minimum, three previous monthly electronic 612 Reports, but such data will not remain available indefinitely in ACE.

The electronic 612 Reports will only update on, approximately, the first day of every month to ensure the data appearing in the electronic 612 Reports will match the data appearing in the mailed 612 Reports. The data elements appearing in the electronic 612 Reports will be the same as the data elements appearing in the mailed 612 Reports, including the new element described below.

It is important to note that CBP will continue its current processes for mailing the 612 Reports, which remain the official notice to sureties as required by 19 CFR 24.3a(d). Information and data that appear on the mailed 612 Report will supersede the data elements that appear in the electronic 612 Reports, and sureties should continue to consult the mailed 612 Reports to determine the extent of their legal obligations. Moreover, only sureties who have an ACE Portal account will be able to view their electronic 612 Reports that will be available in ACE Reports beginning on May 1, 2022. CBP encourages sureties who do not already have an ACE Portal account to apply for access to be able to electronically view their 612 Reports.<sup>12</sup>

## *2. Minor Modifications to the Information in and Appearance of the Mailed 612 Reports*

As part of Release 5, there will be minor modifications to the information in and appearance of the mailed 612 Report. The mailed 612 Report will continue to have the same structure and provide the same information as it does now, but CBP will add a new data element and column, the "Bill Version #", which is intended to help sureties track whether a certain bill's information is current.<sup>13</sup> In addition, the mailed 612 Report will no longer be printed on paper with a green bar. Instead, as of May 1, 2022, the mailed 612 Report will be printed on more common legal landscape paper.

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<sup>12</sup> CBP will provide any needed support for setting up ACE Portal accounts. See *supra* footnotes 7–9 for more information about creating ACE Portal accounts, navigating ACE Reports, and accessing 612 Reports in the Workspace Module.

<sup>13</sup> CBP assigns bills a specific number that corresponds to a bill as it existed at a specific point in time. Bills change due to recalculation of interest, partial payment, etc. and CBP updates the bill version number when a bill changes. For 612 Reports, the "Bill Version #" will correspond to the bill as it existed at the time that the mailed 612 Report was generated.

Dated: March 9, 2022.

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

[Published in the Federal Register, March 16, 2022 (85 FR 14899)]

# U.S. Court of Appeals for the Federal Circuit

NEXTEEL Co., LTD., Plaintiff-Appellee SEAH STEEL CORP.,  
Plaintiff-Cross-Appellant v. UNITED STATES, MAVERICK TUBE  
CORPORATION, TENARIS BAY CITY, INC., Defendants-Appellees UNITED  
STATES STEEL CORPORATION, Defendant-Appellant

Appeal No. 2021–1334, 2021–1430

Appeals from the United States Court of International Trade in No. 1:18-cv-00083-JCG, Judge Jennifer Choe-Groves.

Decided: March 11, 2022

HENRY DAVID ALMOND, Arnold & Porter Kaye Scholer LLP, Washington, DC, argued for plaintiff-appellee. Also represented by LESLIE BAILEY, CHRISTINE CHOI, KANG WOO LEE, J. DAVID PARK, DANIEL WILSON.

JEFFREY M. WINTON, Winton & Chapman PLLC, Washington, DC, argued for plaintiff-cross-appellant. Also represented by MICHAEL JOHN CHAPMAN, JOOYOUN JEONG, VI MAI.

HARDEEP KAUR JOSAN, International Trade Field Office, United States Department of Justice, New York, NY, argued for defendant-appellee United States. Also represented by BRIAN M. BOYNTON, CLAUDIA BURKE, JEANNE DAVIDSON; MYKHAYLO GRYZLOV, Office of the Chief Counsel for Trade Enforcement and Compliance, United States Department of Commerce, Washington, DC.

GREGORY J. SPAK, White & Case LLP, Washington, DC, for defendants-appellees Maverick Tube Corporation, Tenaris Bay City, Inc. Also represented by FRANK JOHN SCHWEITZER, MATTHEW WOLF SOLOMON, KRISTINA ZISSIS.

THOMAS M. BELINE, Cassidy Levy Kent (USA) LLP, Washington, DC, argued for defendant-appellant. Also represented by MYLES SAMUEL GETLAN, JAMES EDWARD RANDELL, IV, SARAH E. SHULMAN.

Before O'MALLEY, BRYSON, and HUGHES, *Circuit Judges*.

HUGHES, *Circuit Judge*.

This appeal arises out of the United States Department of Commerce's administrative review of its antidumping order on oil country tubular goods from the Republic of Korea.

Calculating constructed value, Commerce found five circumstances that created a "particular market situation" affecting inputs to oil country tubular goods. The Court of International Trade determined that this finding was not supported by substantial evidence and "direct[ed] Commerce to reverse its finding of a particular market situation." *NEXTEEL Co. v. United States*, 450 F. Supp. 3d 1333, 1343 (Ct. Int'l Trade 2020). We find that three of the five circumstances Commerce relied on to show a particular market situation are not supported by substantial evidence. Thus, with modified reasoning, we affirm the trial court's conclusion that substantial evidence



does not support Commerce’s finding. But because the Court of International Trade lacks authority to reverse Commerce, we vacate the trial court’s opinion to the extent that it directs Commerce to reach a certain outcome.

Comparing normal value to export price, Commerce relied on its “differential pricing analysis” methodology. In *Stupp Corp. v. United States*, 5 F.4th 1341 (Fed. Cir. 2021), we vacated aspects of Commerce’s differential pricing analysis over concerns about Commerce’s use of statistical methodologies when certain preconditions for their use are not met. *Id.* at 1360. Commerce’s analysis here raises identical concerns, so we vacate the trial court’s decision upholding the methodology and remand for reconsideration in view of *Stupp*.

Seeing no error in the other methodologies that Cross-Appellant challenges, we otherwise affirm.

## BACKGROUND

In 2016, the Department of Commerce initiated its second administrative review of the antidumping order on oil country tubular goods (OCTG) from the Republic of Korea (Korea). Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016, 82 Fed. Reg. 46,963,46,963 (Oct. 10, 2017) (*Preliminary Results*). The review covered the period from September 1, 2015 through August 31, 2016. *Id.* Commerce selected for individual examination the two companies that accounted for the largest volume of subject merchandise during the period of review, NEXTEEL Co., Ltd. and SeAH Steel Corporation. Decision Memorandum for Preliminary Results, at 2, 82 ITADOC 46,963 (Oct. 2, 2017) (*Preliminary Results Memo*).

In an antidumping review, Commerce generally compares the price at which the subject merchandise is sold in the United States to the “normal value,” which is the price of like products in the exporting country or a third country. 19 U.S.C. §§ 1677(35), 1677a(a), 1677b(a). Calculating normal value, Commerce determined that “neither respondent had a viable home market or third-country market during the [period of review].” *Preliminary Results Memo* at 11. Commerce therefore based its calculation of the normal value on constructed value pursuant to 19 U.S.C. § 1677b(a)(4). *Preliminary Results Memo* at 11. Constructed value is based on the costs of producing and selling the merchandise, with an allowance for profits. 19 U.S.C. § 1677b(e).

Considering costs, Commerce found “a particular market situation” under 19 U.S.C. § 1677b(e), affecting two inputs to OCTG: hot-rolled coil (HRC) and electricity. Decision Memorandum for Final Results,

at 16–17, 83 ITADOC 17,146 (Apr. 11, 2018) (*Final Results Memo*). Commerce found a particular market situation “based on the collective impact of Korean HRC subsidies, Korean imports of HRC from China, strategic alliances, and government involvement in the Korean electricity market.” *Id.* at 17. Having found a particular market situation, Commerce adjusted the cost of HRC in its calculation based on the countervailing duty rate determined for POSCO, a Korean HRC producer, in Hot-Rolled Steel Flat Products from Korea. *Final Results Memo* at 29;<sup>1</sup> Appx7560 (SeAH Preliminary Results Analysis Memorandum).

Commerce calculated the profit component of constructed value under § 1677b(e)(2)(B)(iii), which allows Commerce to calculate profits using “any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than [the specific exporter or producer examined]).” The agency calculated profit based on SeAH’s Canadian sales of OCTG. *Final Results Memo* at 55. Turning to the profit cap, Commerce again relied on SeAH’s Canadian sales as “facts available.” *Id.* at 60. Commerce reasoned that these sales were the best choice for a profit cap because they are “specific to OCTG and represent[] the production experience of a Korean OCTG producer in Korea.” *Id.*

When calculating export price, Commerce adjusted for freight expenses pursuant to 19 U.S.C. § 1677a(c)(2)(A). *Final Results Memo* at 87–88. Following its “normal practice,” Commerce capped the amount of freight revenue in its calculation at the amount of freight charges incurred. *Id.* at 87; Appx7554–55 (SeAH Preliminary Results Analysis Memorandum).

Finally, Commerce compared export price and normal value. Employing its “differential pricing analysis” methodology based on a statistic called “Cohen’s *d*,” Commerce found a pattern of U.S. prices that “differ significantly among purchasers, regions, or periods of time” under 19 U.S.C. § 1677f-1(d)(1)(B)(i). Based on this analysis, Commerce used an “average-to-transaction” comparison method, *Preliminary Results Memo* at 10–11; *Final Results Memo* at 76, comparing averaged normal value prices to non-averaged export prices of individual transactions, 19 U.S.C. § 1677f-1(d)(1)(B).

NEXTEEL and SeAH appealed the Final Results to the Court of International Trade, arguing that Commerce’s particular market situation, profit cap, freight revenue cap, and differential pricing analyses were unsupported by substantial evidence or not in accor-

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<sup>1</sup> Citing Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination, 81 Fed. Reg. 53,439 (Aug. 12, 2016), as amended by 81 Fed. Reg. 67,960 (Oct. 3, 2016).

dance with law. *NEXTEEL Co. v. United States*, 392 F. Supp. 3d 1276, 1282–83. (Ct. Int’l Trade 2019) (*NEXTEEL I*). The court concluded that Commerce’s particular market situation finding was unsupported by substantial evidence. *Id.* at 1288. It remanded for further proceedings on that issue. *Id.* The court affirmed Commerce’s profit cap, freight revenue cap, and differential pricing analyses. *Id.* at 1290, 1293, 1295–97.

On remand, Commerce continued to find a particular market situation, relying on a fifth factor, “steel industry restructuring effort by the Korean government,” along with the previous four. Final Results of Redetermination Pursuant to Ct. Remand at 20, *NEXTEEL I*, 392 F. Supp. 3d 1276 (No. 18–00083), ECF No. 81–1 (*First Remand Results*).

Reviewing Commerce’s first remand results, the Court of International Trade rejected Commerce’s finding of a particular market situation as unsupported by substantial evidence, “both when viewing the five factors individually and collectively.” *NEXTEEL Co. v. United States*, 450 F. Supp. 3d 1333, 1343 (Ct. Int’l Trade 2020) (*NEXTEEL II*). The court remanded the issue to Commerce a second time, this time “direct[ing] Commerce to reverse its finding of a particular market situation.” *Id.*

Under protest, Commerce reversed its finding of a particular market situation and recalculated the dumping margins accordingly. Final Results of Redetermination Pursuant to Ct. Remand at 4–5, *NEXTEEL II*, 450 F. Supp. 3d 1333 (No. 18–00083), ECF No. 96–1 (*Second Remand Results*). The Court of International Trade affirmed Commerce’s second remand results. *NEXTEEL Co. v. United States*, 475 F. Supp. 3d 1378, 1380 (Ct. Int’l Trade 2020).

United States Steel appeals, challenging the trial court’s ruling that Commerce’s finding of a particular market situation is unsupported by substantial evidence, as well as the trial court’s direction to Commerce to reach a particular outcome on its second remand. SeAH cross appeals, challenging the trial court’s affirmance of Commerce’s differential pricing analysis, its freight revenue cap, and its use of SeAH’s own data as a profit cap.

## ANALYSIS

### I. Standard of Review

“We review a decision of the Court of International Trade evaluating an antidumping determination by Commerce by reapplying the statutory standard of review that the Court of International Trade applied in reviewing the administrative record.” *Peer Bearing Co.-Changshan v. United States*, 766 F.3d 1396, 1399 (Fed. Cir. 2014).

Thus, “[w]e will uphold Commerce’s determination unless it is unsupported by substantial evidence on the record or otherwise not in accordance with the law.” *Id.*; 19 U.S.C. § 1516a(b)(1)(B)(i).

When “identifying, selecting and applying methodologies to implement the dictates set forth in the governing statute,” we recognize the technical expertise of the agency and give it deference “both greater than and distinct from that accorded the agency in interpreting the statutes it administers.” *Fujitsu Gen. Ltd. v. United States*, 88 F.3d 1034, 1039 (Fed. Cir. 1996).

## II. Particular Market Situation

The Trade Preferences Extension Act of 2015 (TPEA) allows Commerce to consider a “particular market situation” when calculating constructed value. Pub. L. No. 114–27, § 504, 129 Stat. 362, 385. Under 19 U.S.C. § 1677b(e), as revised by the TPEA,

if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this part or any other calculation methodology.

The statute does not define “particular market situation,” but the plain language of § 1677b(e) identifies the factual support Commerce must provide to invoke this provision. Commerce must find that the cost incurred to produce the subject merchandise “does not accurately reflect the cost of production in the ordinary course of trade.” 19 U.S.C. § 1677b(e). As the Court of International Trade has noted, the circumstances supporting a “particular” market situation also must be “particular” to producers of the subject merchandise during the relevant period. *See SeAH Steel Corp. v. United States*, 513 F. Supp. 3d 1367, 1393 (Ct. Int’l Trade 2021). An ongoing global phenomenon would not alone constitute a deviation from the “ordinary course of trade.”

Congress provided examples of a particular market situation:

[A] “particular market situation” . . . might exist. . . where there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set. It also maybe the case that a particular market situation could arise from differing patterns of demand in the United States and in the foreign market. For example, if significant price changes are closely correlated with holidays which occur at different

times of the year in the two markets, the prices in the foreign market may not be suitable for comparison to prices to the United States.

Statement of Administrative Action, H.R. Rep. No. 103316, vol. 1, at 822 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 4040, 4162. These are all situations in which some circumstance distorts costs so that they are not set based on normal market forces or do not move with the rest of the market.

Nothing in the statute requires Commerce to quantify the distortion precisely. Still, a quantitative comparison showing a difference between costs incurred and costs in the ordinary course of trade could be substantial evidence supporting the existence of a particular market situation. Likewise, evidence that costs do not differ at all from what they would have been in the ordinary course of trade would “fairly detract[] from the substantiality of the evidence.” *Atl. Sugar, Ltd. v. United States*, 744 F.2d 1556, 1562 (Fed. Cir. 1984).

Commerce found a particular market situation based on the “collective impact” of

- Korean government subsidies for HRC production,
- strategic alliances between HRC suppliers and OCTG producers,
- Korean government steel industry restructuring efforts,
- Korean government involvement in the electricity market, and
- imports of low-priced HRC from China.

*Final Results Memo* at 17; *First Remand Results* at 20. We address these circumstances in turn.

#### *A. Korean Government HRC Subsidies*

Commerce determined that “[r]ecord evidence shows subsidization of HRC by the Korean government,” and because “approximately 80 percent of the cost of OCTG production” is the HRC input, “distortions in the HRC market. . . have a significant impact on production costs of OCTG.” *First Remand Results* at 21. Commerce relied on an earlier investigation of HRC from Korea from January 1, 2014, through December 31, 2014, which, Commerce explained, found a subsidy rate of almost 60% for POSCO. *Id.* at 21, 18 & n.84. Commerce found that the mandatory respondents in the present review bought HRC from POSCO in significant quantities. *Id.* at 21; *see also* Appx7560 (SeAH Preliminary Results Analysis Memorandum showing 19.9% of HRC purchases from POSCO).

Commerce arrived at the 60% subsidy rate after it determined that it “c[ould] not accurately calculate POSCO’s . . . subsidy rate.” Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea, at 61, 81 ITADOC 53,439 (Aug. 4, 2016). Commerce thus relied on facts otherwise available and made inferences adverse to POSCO, *id.*, as permitted by 19 U.S.C. § 1677e(a)–(b). The rate Commerce relied on was also from an earlier period of investigation that ended eight months before the present period of review. *See id.* at 3.

But in its first administrative review of the same countervailing duty order, Commerce found de minimis subsidy rates. Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2016, 84 Fed. Reg. 28,461, 28,461 (June 19, 2019), *as amended by* 84 Fed. Reg. 35,604 (July 24, 2019). In that review, Commerce did not rely on adverse facts available. Commerce considered data from January 1, 2016, through December 31, 2016, a period which overlaps with the period of review for this administrative review. Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, 2016: Certain Hot-Rolled Steel Flat Products from the Republic of Korea, at 4, 83 ITADOC 24,252 (October 30, 2018).<sup>2</sup> This evidence is at least as probative of the Korean government’s actual subsidization during the period of review as the higher rate Commerce relied on.<sup>3</sup>

Commerce could support a finding of a particular market situation with evidence of subsidies to producers of an input to the subject merchandise. But the subsidies must be shown to affect the price of the input so that it does “not accurately reflect the cost of production in the ordinary course of trade,” 19 U.S.C. § 1677b(e), and their effect must be “particular” to producers of the subject merchandise, *see SeAH Steel*, 513 F. Supp. 3d at 1393. Here, the record evidence is at best mixed on whether significant Korean government subsidies existed during the period of review. Commerce made no finding that any subsidies were passed through to the prices of HRC or that they affected Korean OCTG producers any more than OCTG producers

<sup>2</sup> This evidence was raised before the agency on remand. *First Remand Results* at 54, 59–60.

<sup>3</sup> *See also* Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination, 82 Fed. Reg. 16,341, 16,341–42 (Apr. 4, 2017) (in an investigation of some of the same alleged subsidy programs as HRC, calculating a subsidy rate of only 4.31% based on partial adverse facts available and for a period of review that overlapped by four months with the period of review here); U.S. Steel Reply Br. 11 n.4 (“[A]t least nine programs alleged in [Hot-Rolled Steel] Korea were also found countervailable in [Cut-to-Length] Plate.”).

elsewhere. See *First Remand Results* at 21. Thus, substantial evidence does not support Commerce’s finding that Korean HRC subsidies contribute to a particular market situation.

### *B. Strategic Alliances*

Based on an affidavit showing that POSCO charged different prices to its affiliates than to its other customers, Commerce found that strategic alliances between HRC and OCTG producers “may have created distortions in the prices of HRC in the past, and may continue to impact HRC pricing in a distortive manner during the instant [period of review] and in the future.” *Final Results Memo* at 18. Commerce initially identified no evidence that either SeAH or NEXTEEL was part of such an alliance, that the alliances affected SeAH and NEXTEEL specifically, or that the alliances affected the Korean HRC market as a whole. See *id.* (“[T]he record does not contain specific evidence showing that strategic alliances directly created a distortion in HRC pricing in the current period of review.”). On remand, Commerce bolstered its conclusion that such alliances exist by pointing to a SeAH Steel Group brochure that describes a SeAH Steel Group processing center “as the processing center for POSCO,” which Commerce concluded “demonstrates a close entanglement between HRC suppliers such as POSCO and OCTG producers.” *First Remand Results* at 22–23. SeAH maintains that it was not affiliated with POSCO. SeAH explains that the SeAH entity that runs a “processing center for POSCO” referenced in the brochure had nothing to do with its OCTG operations, and that Commerce has previously found SeAH and POSCO to be unaffiliated. SeAH Resp. Br. 44; Appx7993–94 (SeAH Comments on Draft Remand Redetermination).

Although the parties dispute whether a cost-based particular market situation adjustment must be supported by a showing of market-wide distortions or respondent-specific distortions, Commerce has shown neither. Commerce merely speculated that strategic alliances affected the Korean HRC market as a whole. Its showing of some relationship between POSCO and SeAH is weak and contradicted by other record evidence. Substantial evidence does not support Commerce’s finding that strategic alliances contribute to a particular market situation.

### *C. Steel Industry Restructuring*

On remand, Commerce cited evidence of government-led restructuring of the Korean steel industry. *First Remand Results* at 25–26. Commerce reasoned that “[t]he Korean government’s assistance to

accelerate the steel industry’s response and restructuring interferes with the normal functioning of the free market and alters the ordinary course of trade.” *Id.* at 26. Commerce cited a press release from the Korean Ministry of Strategy and Finance announcing restructuring. *Id.* at 25. As the Court of International Trade noted, though, the period of review concluded on August 31, 2016, and the press release, dated January 25, 2017, announced the Korean government’s “2017 Action Plan for Industrial Restructuring.” *NEXTEEL II*, 450 F. Supp. 3d at 1343.

The announcement and other publications discussing future restructuring efforts provide no evidence of actual government interference during the period of review. Substantial evidence does not support Commerce’s finding that steel industry restructuring efforts contributed to a particular market situation.

\* \* \*

We affirm the Court of International Trade’s conclusions in *NEXTEEL II* that three of the circumstances Commerce cited do not support a finding of a particular market situation on the existing record.<sup>4</sup>

Commerce has not taken a clear position on whether it believes the other two circumstances alone are sufficient. Indeed, in the *First Remand Results*, Commerce carefully avoided making such a finding. See *First Remand Results* at 27 (“Any one of these four factors *can* distort the market such that Commerce *could* reasonably conclude that a [particular market situation] exists. . . . [T]here is no suggestion that any one of the five factors alone is insufficient to establish the particular market situation. Rather, we evaluate the totality of the circumstances . . . .” (emphases added)). We are not free to substitute our own reasoning for that of the agency and must instead “review only the bases on which Commerce made its determination.” *Thai I-Mei Frozen Foods Co. v. United States*, 616 F.3d 1300, 1307 (Fed. Cir. 2010); see also *Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc.*, 419 U.S. 281, 285–86 (1974) (“[W]e may not supply a reasoned basis for the agency’s action that the agency itself has not given . . . .”). But it is far from a foregone conclusion that Commerce would have found a particular market situation based on these two factors alone.

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<sup>4</sup> Because substantial evidence does not support the above three circumstances, we need not reach the issue of whether substantial evidence supports Commerce’s findings that each of the remaining two circumstances contributed to a particular market situation because Commerce explicitly relied on the presence and interaction of all five circumstances. See *First Remand Results* at 27.



Although low-priced Chinese steel could contribute to a particular market situation, the record does not show sufficient particularity for this circumstance to create a particular market situation on its own. Commerce acknowledged that significant quantities of cheaper Chinese HRC flow to many countries and “affect[] the whole world.” *Final Results* at 21; *First Remand Results* at 21–22 (citing a government announcement stating that Chinese excess supply is targeted toward “Korea, ASEAN, and EU”); *id.* at 22 (citing an article from Asian Steel Watch that states “China’s largest [steel] export destination is South Korea” but also provides data showing that many other countries receive large quantities of Chinese steel).

Government control of electricity prices is a type of distortion expressly contemplated by Congress, but the evidence is mixed on whether the Korean government is involved “to such an extent that home market prices cannot be considered to be competitively set,” H.R. Rep. No. 103316, vol. 1 at 822, and whether the prices are any different from what they would be in the ordinary course of trade. *First Remand Results* at 65 (citing a report showing that Korean electricity prices are lower than Japan’s but comparable to median prices among all countries studied). Commerce’s countervailing duty determinations have consistently found that Korean electricity prices are set in accordance with market principles and thus that Korean steel producers have not benefited from government involvement in Korean electricity pricing. *E.g.*, *POSCO v. United States*, 337 F. Supp. 3d 1265, 1282–83 (Ct. Int’l Trade 2018) (upholding Commerce’s finding that the Korean electricity prices were “set in accordance with market principles,” covered costs, and did not confer a benefit to the subject producers); *POSCO v. United States*, 353 F. Supp. 3d 1357, 1368–73 (Ct. Int’l Trade 2018) (sustaining similar findings for a period of investigation from January 1, 2015 through December 31, 2015); *Maverick Tube Corp. v. United States*, 273 F. Supp. 3d 1293, 1303–12 (Ct. Int’l Trade 2017) (sustaining similar findings for welded line pipe from Korea). Commerce has not justified its departure from those findings here. *See* *First Remand Results* at 66.

We therefore affirm the trial court’s decision in *NEXTEEL II* that Commerce’s conclusion—“the presence of all five factors, as well as the interaction of the five factors with one another, supports the finding that a [particular market situation] existed in Korea during the relevant period,” *First Remand Results* at 27—was not supported by substantial evidence.

### III. The Court of International Trade's Reversal

Remanding for the second time, the Court of International Trade “direct[ed] Commerce to reverse its finding of a particular market situation.” *NEXTEEL II*, 450 F. Supp. 3d at 1343.

“[T]he Court of International Trade is precluded by statute from ever outright reversing a decision by Commerce . . . when reviewing countervailing duty and antidumping duty proceedings. Rather, at most it can simply remand for further consideration consistent with its decision.” *Ad Hoc Shrimp Trade Action Comm. v. United States*, 515 F.3d 1372, 1383 (Fed. Cir. 2008); 19 U.S.C. § 1516a(c)(3). Remand is appropriate because “the record may well be enlarged” and “even if it is not, new findings and explanations by the Commission can be expected.” *Nippon Steel Corp. v. Int’l Trade Comm’n*, 345 F.3d 1379, 1380–82 (Fed. Cir. 2003) (*Nippon I*) (holding that the Court of International Trade exceeded its authority by re-weighing the evidence and directing a particular outcome on its second remand). Even so, an open-ended remand may not be required if it would be “futile,” *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1359 (Fed. Cir. 2006) (*Nippon II*), for example because the record supports only one outcome, see *Nucor Corp. v. United States*, 371 F. App’x 83, 90 (Fed. Cir. 2010).

As in *Nippon I*, the court issued its directed remand after one open-ended remand. *NEXTEEL II*, 450 F. Supp. 3d at 1343. The court reversed Commerce based on its weighing of the evidence, e.g., discounting evidence that predated the period of review, *id.* at 1339–42, and not because the record supports only one outcome. Indeed, in view of the conflicting evidence discussed above, the record evidence does not appear to support the *absence* of a particular market situation any more than it supports the existence of one. Remand was thus no more futile than in *Nippon I*. The court exceeded its authority by directing Commerce to reach a particular outcome. On remand, Commerce may seek to justify the particular market situation in accordance with this opinion.

### IV. Differential Pricing Analysis

By default, Commerce calculates dumping margins by comparing averaged normal value sales to averaged export prices. 19 U.S.C. § 1677f-1(d)(1)(A)(i). Commerce may instead use an “average-to-transaction” comparison, comparing averaged normal value sales to export prices of individual transactions, if it finds a “pattern” of U.S. prices that “differ significantly among purchasers, regions, or periods of time.” 19 U.S.C. § 1677f-1(d)(1)(B).

To show such a “pattern,” Commerce uses its “differential pricing analysis” methodology based on a statistic called “Cohen’s *d*.” Based on this analysis, Commerce relied on an average-to-transaction comparison here. *Preliminary Results Memo* at 10–11; *Final Results Memo* at 76.

SeAH argues Commerce’s methodology was flawed because Commerce relied on Cohen’s *d* even though the express conditions for its application were not satisfied: that the data sets being compared be normally distributed, have at least 20 or more data points, and have roughly equal variances. SeAH Resp. Br. 67–68. Our recent opinion in *Stupp Corp. v. United States*, 5 F.4th 1341 (Fed. Cir. 2021), addressed the same argument and vacated the Court of International Trade’s decision upholding the differential pricing analysis. *Id.* at 1360. Because Commerce’s use of Cohen’s *d* here presents identical concerns to those in *Stupp*,<sup>5</sup> we vacate this portion of *NEXTEEL I* and remand to the Court of International Trade to reconsider in view of *Stupp*.

#### V. Freight Revenue Cap

To achieve a “fair comparison” between normal value and export price, Commerce must adjust for shipping. See 19 U.S.C. § 1677b(a); *Torrington Co. v. United States*, 68 F.3d 1347, 1353 (Fed. Cir. 1995). The export price must be “reduced by . . . the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, . . . which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.” 19 U.S.C. § 1677a(c)(2)(A).

Commerce starts with the amount charged to the customer for the subject merchandise and subtracts the net freight expense. *Dongguan Sunrise Furniture Co. v. United States*, 36 Ct. Int’l Trade 860, 893 (2012). The net freight expense is the cost of freight (“freight expense”) less the amount charged to the customer for freight (“freight revenue”). *Id.* Commerce’s “normal practice” is to cap freight revenue at freight cost. *Final Results Memo* at 87; see *Dongguan*, 36 Ct. Int’l Trade at 893. Thus, no adjustment is made if revenue exceeds freight expenses.

Section 1677a(c)(2)(A) requires Commerce to make a freight adjustment but does not specify the method to calculate the adjustment, including whether the “costs, charges, or expenses” incident to moving the subject merchandise should be calculated based on net or

<sup>5</sup> See Oral Argument at 36:28–43, 42:37–57, [https://oralarguments.caft.uscourts.gov/default.aspx?fl=21-1334\\_11042021.mp3](https://oralarguments.caft.uscourts.gov/default.aspx?fl=21-1334_11042021.mp3) (counsel for SeAH acknowledging that *Stupp* “resolves” this issue, and counsel for the United States acknowledging that *Stupp* “governs” and requesting remand on this issue).

gross expenses. See *Dongguan*, 36 Ct. Int'l Trade at 894; SeAH Resp. Br. 74–75 (conceding that the statute does not indicate how Commerce should treat separately-invoiced freight charges). Commerce has selected a methodology consistent with the statutory language, which we afford greater deference than under the *Chevron* framework. *Fujitsu Gen. Ltd. v. United States*, 88 F.3d 1034, 1039 (Fed. Cir. 1996).

SeAH argues Commerce's methodology is unreasonable because it treats profits and losses on shipping differently, reducing export price when the exporter incurs a loss on shipping but not increasing export price when the exporter achieves a profit. SeAH Resp. Br. 75–76. This result is perhaps counterintuitive, but SeAH gives no explanation of why it is unreasonable.

Commerce is not required to show that its chosen methodology is superior to all others. Still, the freight revenue cap has advantages over other possible methodologies. Compared to simply removing the freight revenue cap, Commerce's interpretation ensures that the freight adjustment is only a downward adjustment, as the statute contemplates. 19 U.S.C. § 1677a(c)(2); *Dongguan*, 36 Ct. Int'l Trade at 894 (“The plain language of § 1677a(c)(2) deals exclusively with downward adjustments to U.S. price.”).

SeAH contends that it would be reasonable to deduct freight cost from the combined price for the merchandise and freight, regardless of whether the invoiced freight revenue was greater than the freight cost. SeAH Resp. Br. 75. But compared to this proposed method, Commerce's method “prevents an exporter from improperly inflating its export price or [constructed export price] of a good by charging a customer more for freight than the exporter's actual freight expenses.” *Final Results Memo* at 87. And Commerce's methodology allows “a proper ‘apples-to-apples’ comparison” between export price and normal value by excluding “profit earned from the sale of a service (freight) as opposed to profit earned from the sales of subject merchandise.” *United States Resp. Br. 23* (quoting *Dongguan*, 36 Ct. Int'l Trade at 895).

SeAH also advocates disregarding separately-invoiced freight altogether and considering only the amount invoiced for the product with no freight adjustment. SeAH Resp. Br. 75. But if separately-invoiced freight were disregarded altogether, an exporter could improperly inflate its export prices by charging more for the merchandise and less for shipping. Such methodology could be inconsistent with the statutory language if the price for the merchandise were inflated in this way. The price charged for the merchandise might include an

“amount . . . attributable to [freight expense],” which the agency would have to deduct under 19 U.S.C. § 1677a(c)(2)(A).

Commerce’s freight revenue cap methodology is reasonable. We thus affirm the Court of International Trade’s decision upholding Commerce’s methodology.

## VI. Profit Cap

When normal value is based on constructed value, constructed value includes the actual profit earned by the exporter on its sales of the subject merchandise in the relevant comparison market. 19 U.S.C. § 1677b(e)(2)(A). When that information is unavailable, § 1677b(e)(2)(B) provides that Commerce may calculate profit based on (i) the exporter’s profit on the same general category of products in the comparison market, (ii) the average profits earned by other exporters of the subject merchandise in the relevant comparison market, or

(iii) . . . any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise.

Here, after justifying its departure from the other three methods, Commerce relied on “any other reasonable method” pursuant to § 1677b(e)(2)(B)(iii). *Final Results Memo* at 53–54. The agency calculated profit based on SeAH’s Canadian sales of OCTG. *Id.* at 55. Turning to the profit cap, Commerce found that it could not directly calculate the profit cap described in § 1677b(e)(2)(B)(iii) because “[t]here is no profit information for sales in Korea of OCTG and products in the same general category on the record.” *Final Results Memo* at 60. Commerce ultimately relied again on SeAH’s Canadian sales as a profit cap based on “facts available.” *Id.* Commerce determined that these sales were the best choice for a profit cap because they are “specific to OCTG and represent[] the production experience of a Korean OCTG producer in Korea.” *Id.*

SeAH argues that Commerce’s use of SeAH’s own sales to set the profit cap is directly prohibited by the phrase “other than the exporter or producer described in clause (i)” in § 1677b(e)(2)(B)(iii). SeAH Resp. Br. 79–80.

SeAH misreads the statute. Part (iii) describes the quantity Commerce must calculate—the profits normally realized by other exporters. The language “other than the exporter or producer described in clause (i)” clarifies whose profit Commerce must calculate but does

not limit the data Commerce may rely on to calculate it. As with any other quantity, Commerce may rely on facts available pursuant to 19 U.S.C. § 1677e(a).

We thus affirm the holding of the Court of International Trade that Commerce's application of the profit cap is lawful.

#### CONCLUSION

In summary, we agree with the Court of International Trade that substantial evidence does not support the existence of a particular market situation created by Commerce's five enumerated circumstances. Because we are limited to reviewing Commerce's reasoning, we do not decide whether a particular market situation could be found based on any subset of the factors or other reasoning. Because the Court of International Trade lacks authority to reverse Commerce, we vacate the trial court's opinion to the extent it directs Commerce to reach a certain outcome.

We vacate the Court of International Trade's decision upholding Commerce's differential pricing analysis for the reasons stated in our recent decision in *Stupp*, 5 F.4th 1341, and remand for proceedings consistent with that decision.

We affirm the Court of International Trade's decision upholding Commerce's use of a freight revenue cap as a reasonable methodology to implement 19 U.S.C. § 1677a(c)(2)(A).

We affirm the Court of International Trade's decision upholding Commerce's use of SeAH's own data to calculate a profit cap as consistent with 19 U.S.C. § 1677b(e)(2)(B)(iii).

#### **AFFIRMED IN PART, VACATED IN PART, AND REMANDED COSTS**

No costs.

# U.S. Court of International Trade

Slip Op. 22–19

NORCA INDUSTRIAL COMPANY, LLC, Plaintiff, and INTERNATIONAL PIPING & PROCUREMENT GROUP, LP, Consolidated Plaintiff, v. UNITED STATES, Defendant.

Before: Jennifer Choe-Groves, Judge  
Consol. Court No. 21–00192

[Granting motion for remand and remanding the U.S. Customs and Border Protection’s determination of evasion of the antidumping duty order on certain carbon steel butt-weld pipe fittings from the People’s Republic of China.]

Dated: March 11, 2022

*Peter Koenig and Jeremy W. Dutra*, Squire Patton Boggs (US) LLP, of Washington, D.C., for Plaintiff Norca Industrial Company, LLC, and Consolidated Plaintiff International Piping & Procurement Group, LP. With them on the brief was *Christopher D. Clark*.

*Bret R. Vallacher*, Trial Attorney, 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 *L. Misha Preheim*, Assistant Director.

## **OPINION AND ORDER**

### **Choe-Groves, Judge:**

This case concerns challenges to determinations by U.S. Customs and Border Protection (“Customs” or “CBP”) pursuant to the Enforce and Protect Act of 2015 (“EAPA”) regarding allegations that Plaintiff Norca Industrial Company, LLC (“Norca”) and Consolidated Plaintiff International Piping & Procurement Group, LP (“IPPG”) (collectively, “Plaintiffs”) evaded the antidumping duty order covering certain carbon steel butt-weld (“CSBW”) pipe fittings from the People’s Republic of China (“AD Order”). See *Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings From the People’s Republic of China*, 57 Fed. Reg. 29,702 (Dep’t of Commerce July 6, 1992). Before the Court are Plaintiff Norca Industrial Company, LLC’s Rule 56.2 Motion for Judgment on the Agency Record, ECF No. 20; Plaintiff International Piping & Procurement Group, LP’s Rule 56.2 Motion for Judgment on the Agency Record (“IPPG’s 56.2 Mot.”), ECF No. 22; and Defendant’s Motion for Voluntary Remand and to Suspend the Current Briefing Schedule (“Defendant’s Motion” or “Def.’s Mot.”), ECF No. 23. Defendant’s Motion indicates that neither Norca nor

IPPG oppose remand, “but believe that, for the reasons stated in their motion for judgment, the remand should extend to other issues raised in their motion.” *Id.* For the following reasons, the Court grants Defendant’s Motion.

### BACKGROUND

EAPA investigations are governed by 19 U.S.C. § 1517, which directs Customs to initiate an investigation within fifteen business days of receipt of an allegation that “reasonably suggests that covered merchandise has been entered into the Customs territory of the United States through evasion.” 19 U.S.C. § 1517(b)(1). “Covered merchandise” is “merchandise that is subject to” antidumping or countervailing duty orders issued pursuant to 19 U.S.C. § 1673e or 19 U.S.C. § 1671e, respectively. *Id.* § 1517(a)(3). “Evasion,” in turn, is defined as:

entering covered merchandise into the Customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.

*Id.* § 1517(a)(5)(A).

In this case, the Administrative Record Index filed with the Court, ECF No. 18, is not the complete administrative record but includes the administrative Notice of Determination as to Evasion in the form of a letter to the relevant parties from Customs’ Trade Remedy Law Enforcement Directorate, dated November 6, 2020, on EAPA Consolidated Case No. 7335 (“Determination”), ECF No. 18–2. According to this Determination, on October 9, 2019, Allied Group (“Allied”), a U.S. producer of CSBW pipe fittings, alleged to Customs that Norca and IPPG were evading the AD Order by importing CSBW pipe fittings of Chinese origin into the United States that had been “transshipped” through Vietnam. *Id.* at 2. Customs determined that the allegations were credible and initiated separate but parallel EAPA investigations of Norca’s and IPPG’s imports pursuant to 19 U.S.C. § 1517(b)(1). *See id.*

Customs issued CBP Form 28 questionnaires to Norca and IPPG for entry and production documentation and conducted an on-site visit to the facilities of their Vietnamese supplier, BW Fittings Co., Ltd. (“BW Fittings”). *Id.* at 2–3. From the available information, Customs determined that a “reasonable suspicion existed that at least some of



the CSBW pipe fittings imported by Norca and IPPG into the United States . . . were manufactured in China and, therefore, should have been subject to AD duties.” *Id.* at 3. Customs then implemented interim measures against Norca and IPPG and informed them that liquidation of their CSBW pipe fittings entered on or after November 5, 2019 (the date of initiation of the two investigations, later administratively consolidated) would be suspended and that the period for liquidating all unliquidated entries entered before that date would be extended.<sup>1</sup> *See id.*

After issuing several subsequent requests for information (“RFIs”) to Norca, IPPG, and Allied, Customs analyzed the record pursuant to the substantial evidence standard of 19 U.S.C. § 1517(c)(1)(A) and concluded that the record supported “a determination that Norca’s and IPPG’s imports of covered merchandise entered the United States through evasion, resulting in the avoidance of applicable AD deposits or other security.” *Id.* at 3–5, 13–14. Customs’ Regulations and Rulings of the Office of Trade affirmed the Determination after de novo administrative review. *See Admin. Review Decision, ECF No. 18–3.*

Norca and IPPG filed separate suits to contest the Determination and administrative review, and the Court consolidated the cases. Consol. and Scheduling Order, ECF No. 14. After Norca and IPPG filed motions for judgment on the agency record pursuant to USCIT Rule 56.2 (ECF Nos. 20 and 22), Defendant United States (“Defendant”) moved for remand. *See Def.’s Mot.*

## JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c)<sup>2</sup> and 19 U.S.C. § 1517(g)(1). When an “agency recognizes deficiencies in its decisions, explanations, or procedures . . . it may ask the court to remand the case back to the agency so that it may correct the deficiency.” 3 Charles H. Koch, Jr., *Administrative Law and Practice* § 8:31(d) (3d ed. 2010); *see also SKF USA Inc. v. United States*, 254 F.3d 1022, 1028 (Fed. Cir. 2001). “[I]f the agency’s concern is substantial and legitimate, a remand is usually appropriate.” *SKF*, 254 F.3d at 1029. An agency’s concerns are substantial and legitimate when “(1)

<sup>1</sup> On this point, the Determination is unclear as to whether the interim measures imposed on Norca and IPPG extended only to entries of CSBW pipe fittings sourced from BW Fittings.

<sup>2</sup> Congress amended 28 U.S.C. § 1581(c) to encompass EAPA cases via § 421(b) of Title IV of the Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114–125, 130 Stat. 154, 168 (2016). All statutory citations herein are to the 2018 edition of the United States Code and all citations to regulations are to the 2020 edition of the Code of Federal Regulations.

[it] supports its request with a compelling justification, (2) the need for finality does not outweigh the justification, and (3) the scope of the request is appropriate.” *Baroque Timber Indus. (Zhongshan) Co. v. United States*, 37 CIT 1123, 1127, 925 F. Supp. 2d 1332, 1338–39 (2013) (citation omitted); *see also SKF*, 254 F.3d at 1029–30 (stating that “a remand to the agency is required, absent the most unusual circumstances verging on bad faith,” particularly with respect to a change in policy relating to the interpretation of an ambiguous statute).

## DISCUSSION

Defendant contends that its request for remand is substantial and legitimate because it “recently learned” that certain documents collected during the investigation were not provided to the Parties during the investigation or included as part of the record that Customs received for consideration during the administrative review. Def.’s Mot. at 1–2. Plaintiffs “are not opposed to a voluntary remand, but believe that, for the reasons stated in their motion for judgment, the remand should extend to other issues raised in their motion.” *Id.* at 1.

Norca’s memorandum accompanying its USCIT Rule 56.2 motion complains in part of a “third party” that submitted numerous photographs and videos from a November 2019 site visit of BW Fittings’ Vietnam facility, and that Norca did not learn about Customs’ communications with the third party or that the third party submitted evidence to Customs until after Customs issued its final determination. Mem. P. & A. Supp. Pl.’s R. 56.2 Mot. J. Agency R. (“Norca’s Memorandum” or “Norca’s Mem.”) at 19–20, ECF No. 21. This legal error was compounded, according to Norca, by Customs’ decision to exclude from the administrative record Customs’ own communications with the third party and the documents and information the third party submitted to Customs pursuant to an investigation request, which Norca argues is a violation of 19 C.F.R. § 165.21 because the administrative record must include, among other things, materials obtained and considered by Customs during the investigation. *Id.* IPPG raises similar allegations in its 56.2 motion. *See* IPPG’s 56.2 Mot. at 2 (incorporating and adopting Norca’s Memorandum)

Defendant concedes that the administrative record is incomplete, stating that remand would allow an opportunity for the “third party” to bracket the business confidential information in its submissions to Customs, and that if it fails to do so, remand would allow Customs to provide a public summary of those materials as well as permit the filing of public summaries of the business confidential information withheld from the public record, steps that will enable the public

record to be as complete as possible for the purposes of Customs' decision. Def.'s Mot. at 1–2. Defendant's Motion confirms that the Parties will have an opportunity to submit rebuttal evidence and arguments to Customs based on the "third party" information as well as the public summaries; Customs will render a decision analyzing whether the new record information (public and confidential) impacts its determination of evasion; the Parties will have an opportunity to make arguments to Customs based on the new record information; and Customs will render a decision analyzing whether the new record information (public and confidential), including Customs' new decision, and any rebuttal evidence and arguments submitted by the parties, impacts its final administrative determination. *Id.* at 3–5.

More broadly, Norca argues that the Determination is contrary to law because: the AD Order does not cover finished CSBW pipe fittings from Vietnam or manufactured in Vietnam using rough/stamping parts from China; the record shows BW Fittings imported seamless pipe to produce finished CSBW fittings; Customs engaged in unlawful speculation unsupported by substantial evidence and unreasonably drew adverse inferences against Norca based on perceived inconsistencies in documents and information BW Fittings provided during the investigation; and Customs unlawfully excluded exculpatory information from the administrative record, deprived Norca of due process by failing to provide it with access to records during the investigation, and based the final determination on new allegations of perceived document discrepancies that Customs never provided an opportunity to explain. *See generally* Norca's Mem. Similarly, IPPG argues that: there was no basis to initiate the EAPA investigation in the first place because the finished CSBW pipe fittings imported from Vietnam are not covered as a matter of law by the AD Order; the findings on which the Determination is based are unsupported speculation contradicted by record evidence; and Customs deprived IPPG of due process throughout the investigation by withholding documents and drawing adverse inferences against IPPG based on perceived discrepancies in documents without providing IPPG notice and an opportunity to address the alleged discrepancies. *See generally* IPPG's 56.2 Mot.

The Court agrees that it is essential for the Parties to have the opportunity to make presentations to Customs based on complete information, and that Customs' consideration of the entirety of the record is also essential to ensure the accuracy and completeness of its final administrative determinations. *See* 19 U.S.C. § 1517(f) (providing for "de novo review of the determination" by the administrative

authority); *see, e.g., Royal Brush Mfg., Inc. v. United States*, 44 CIT \_\_, \_\_, 483 F. Supp. 3d 1294, 1307–08 (2020) (remanding to Customs to remedy a lack of public summaries and to provide respondent an opportunity to participate on the basis of the information it should have received during the underlying proceeding). The only question here is how remand should be framed. Because remand will result not only in correcting the record but a reconsideration by Customs of the allegations of evasion “anew” based on the complete record, the Court declines to opine at this point on the “other issues raised” in Plaintiffs’ briefs on their USCIT Rule 56.2 motions for judgment on the agency record and remands all issues to Customs for full consideration of the complete record.

### CONCLUSION

Upon consideration of Defendant’s Motion, and all other papers and proceedings in this action, it is hereby

**ORDERED** that Defendant’s Motion is granted; and it is further

**ORDERED** that the Order of November 4, 2021, ECF No. 25, suspending the schedule for briefing is vacated and the remaining deadlines in the Consolidation and Scheduling Order, ECF No. 14, are vacated; and it is further

**ORDERED** that the March 22, 2021 final administrative determination by U.S. Customs and Border Protection is remanded for further consideration based on the complete record; and it is further

**ORDERED** that this action shall proceed according to the following schedule:

1. Customs shall file the remand determination on or before July 18, 2022;
2. Customs shall file the remand administrative record index on or before August 1, 2022;
3. Comments in opposition to the remand determination shall be filed on or before September 16, 2022;
4. Comments in support of the remand determination shall be filed on or before October 17, 2022;
5. The joint appendix shall be filed on or before October 31, 2022.

Dated: March 11, 2022

New York, New York

*/s/ Jennifer Choe-Groves*

JENNIFER CHOE-GROVES, JUDGE

## Slip Op. 22–20

ROOT SCIENCES, LLC, Plaintiff, v. THE UNITED STATES, Defendant.

Before: Gary S. Katzmann, Judge  
Court No. 21–00123

[Motion for reconsideration denied.]

Dated: March 15, 2022

*Richard F. O'Neill*, Neville Peterson LLP, of Seattle, WA, for Plaintiff Root Sciences LLC. With him on the briefs were *John M. Peterson*, of New York, N.Y., and *Patrick B. Klein*.

*Guy R. Eddon*, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, N.Y., for Defendant United States. With him on the brief were *Brian M. Boynton*, Acting Assistant Attorney General, *Patricia M. McCarthy*, Director, *Justin R. Miller*, Attorney in Charge, International Trade Field Office, *Aimee Lee*, Assistant Director. Of Counsel on the brief were *Mathias Rabinovitch* and *Alexandra Khrebtukova*, Office of the Assistant Chief Counsel for International Trade Litigation, U.S. Customs and Border Protection, of New York, N.Y.

**OPINION****Katzmann, Judge:**

Before the court is Root Sciences, LLC’s (“Plaintiff” or “Root Sciences”) motion, pursuant to Rules 7 and 59 of the Rules of the United States Court of International Trade, for reconsideration of *Root Sciences, LLC v. United States*, 45 CIT \_\_, 543 F. Supp. 3d 1358 (2021) on the grounds that the court erred as a matter of law in dismissing the case for lack of subject matter jurisdiction. Pl.’s Mot. for Rehearing & Br. Supp. Mot. for Rehearing, Nov. 8, 2021, ECF No. 47 (“Pl.’s Mot.” and “Pl.’s Br.”, respectively). Because Plaintiff’s motion, amounts to nothing more than a disagreement with the court’s reasoning on matters fully litigated, devoid of showing manifest error, it is insufficient to warrant reconsideration and is denied.

Whether to grant reconsideration is a matter within the court’s discretion. See *Entergy Nuclear FitzPatrick, LLC v. United States*, 711 F. 3d 1382, 1386 (Fed. Cir. 2013) (citing *Yuba Natural Res., Inc. v. United States*, 904 F.2d 1577, 1583 (Fed. Cir. 1990)). While correcting clear legal error comprises one of the bases to grant a motion for reconsideration, see *Biery v. United States*, 818 F.3d 704, 711 (Fed. Cir. 2016); see also *Ford Motor Co. v. United States*, 30 CIT 1587, 1588, 2006 WL 2789856 at \*1 (2006), such motions are not an opportunity for the losing party to relitigate the case, see *Golden Bridge Tech., Inc. v. Apple Inc.*, 758 F.3d 1362, 1369 (Fed. Cir. 2014); see also *Totes-Isotoner Corp. v. United States*, 32 CIT 1172, 1173, 580 F. Supp. 2d 1371, 1374 (2008). “[A] court should not disturb its prior decision

unless it is ‘manifestly erroneous,’” *Marvin Furniture (Shanghai) Co. v. United States*, 37 CIT 65, 66, 899 F. Supp. 2d 1352, 1353 (2013); see also *Golden Bridge Tech.*, 758 F.3d at 1369.

The court earlier concluded that the seizure of Root Sciences’ subject merchandise by Customs and Border Protection (“CBP”) under 19 U.S.C. § 1499(c)(4) precluded the operation of a “deemed exclusion” under section 1499(c)(5) such that this court lacked subject matter jurisdiction. *Root Sciences*, 543 F. Supp. 3d at 1369. In its motion for reconsideration, Plaintiff contends that the court committed an error of law in so deciding to the extent that the opinion creates a non-statutory basis for the termination of and/or tolls the 30-day “deemed exclusion” period of section 1499(c)(5)(A). Pl.’s Br. at 7–14. The court’s decision does neither, as the court held that section 1499(c)(5) is inapposite in light of the circumstances of CBP’s seizure.

The court further notes that Plaintiff’s disagreement with this statutory construction was already fully briefed, see, e.g., Pl.’s Resp. to June 16, 2021 Questions for Oral Arg. at 11, June 28, 2021, ECF No. 40 (“Nothing in the statute, CBP’s regulations, or judicial precedent suggests that the seizure of a product by CBP somehow terminates the statutory process set out in 19 U.S.C. § 1499.”), and considered and rejected, see 543 F. Supp. 3d at 1369 (concluding that “the best reading of the statute . . . is that[] when section 1499(c)(4) is invoked via a seizure of the subject merchandise within thirty days of that merchandise’s presentation for examination, the mechanism of deemed exclusion embodied in section 1499(c)(5) is inapplicable.”).

As Root Sciences merely disagrees with the court’s statutory interpretation without proving any “manifest error,” the court declines to disturb its prior decision.

For the foregoing reasons, it is

**ORDERED** that Plaintiffs’ motion to reconsider is denied.

**SO ORDERED.**

Dated: March 15, 2022

New York, New York

/s/ Gary S. Katzmann

GARY S. KATZMANN, JUDGE

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