U.S. Customs and Border Protection

CBP Dec. 20–17

NOTICE OF FINDING THAT CERTAIN STEVIA EXTRACTS AND DERIVATIVES PRODUCED IN THE PEOPLE'S REPUBLIC OF CHINA WITH THE USE OF CONVICT, FORCED OR INDENTURED LABOR ARE BEING, OR ARE LIKELY TO BE, IMPORTED INTO THE UNITED STATES

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

ACTION: General notice of forced labor finding.

SUMMARY: This document notifies the public that the Executive Assistant Commissioner, Office of Trade, of U.S. Customs and Border Protection (CBP), with the approval of the Acting Secretary of Homeland Security, has determined that stevia extracts and derivatives, mined, produced, or manufactured in the People's Republic of China by the Inner Mongolia Hengzheng Group Baoanzhao Agriculture, Industry, and Trade Co., Ltd. (also referred to herein as "Baoanzhao") with the use of convict, forced or indentured labor, are being, or are likely to be, imported into the United States.

DATES: This Finding applies to any merchandise described in Section II of this Notice that is imported on or after October 20, 2020. It also applies to merchandise which has already been imported and has not been released from CBP custody before October 20, 2020.

FOR FURTHER INFORMATION CONTACT: Edward T. Thurmond, Chief, Forced Labor Division, Trade Remedy Law Enforcement Directorate, Office of Trade, (202) 897–9348 or *edward.t.thurmond@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307), "[a]ll goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal

sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited." Under this section, "forced labor" includes "all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily" and includes forced or indentured child labor.

The CBP regulations promulgated under the authority of 19 U.S.C. 1307 are found at sections 12.42 through 12.45 of title 19, Code of Federal Regulations (CFR) (19 CFR 12.42–12.45). Among other things, these regulations allow persons outside of CBP to petition the Commissioner of CBP to investigate whether a certain "class of merchandise . . . is being, or is likely to be, imported into the United States [in violation of 19 U.S.C. 1307]." 19 CFR 12.42(a)–(d). CBP also has the authority to self-initiate an investigation. If the Commissioner of CBP finds that the information available "reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be, imported," the Commissioner will order port directors to "withhold release of any such merchandise pending [further] instructions." 19 CFR 12.42(e). After issuance of a withhold release order, the covered merchandise will be detained by CBP for an admissibility determination and excluded unless the importer demonstrates that the merchandise was not made using forced labor. The importer may also export the merchandise.

These regulations also set forth the procedure for the Commissioner of CBP to issue a Finding when it is determined that the merchandise is subject to the provisions of 19 U.S.C. 1307. Pursuant to 19 CFR 12.42(f), if the Commissioner of CBP finds that merchandise within the purview of 19 U.S.C. 1307 is being, or is likely to be, imported into the United States, the Commissioner of CBP will, with the approval of the Secretary of the Department of Homeland Security (DHS), publish a Finding to that effect in the Customs Bulletin and in the **Federal Register**.[1] Under the authority of 19 CFR 12.44(b), CBP may seize and forfeit imported merchandise covered by a Finding.

On May 20, 2016, CBP issued a withhold release order on "stevia extracts and derivatives" believed to be processed by forced or convict labor in the People's Republic of China by the Inner Mongolia Hengzheng Group Baoanzhao Agriculture, Industry, and Trade Co.,

[1] Although the regulation states that the Secretary of the Treasury must approve the issuance of a Finding, the Secretary of the Treasury delegated this authority to the Secretary of Homeland Security in Treasury Order No. 100–16 (68 FR 28322). In Delegation Order 7010.3, Section II.A.3, the Secretary of Homeland Security delegated the authority to issue a Finding to the Commissioner of CBP, with the approval of the Secretary of Homeland Security. The Commissioner of CBP, in turn, delegated the authority to make a Finding regarding prohibited goods under 19 U.S.C. 1307 to the Executive Assistant Commissioner, Office of Trade.

Ltd. Through its investigation, CBP has determined that there is sufficient evidence to support the finding that Baoanzhao is a prison/forced labor facility and that stevia extracts and derivatives mined, produced, or manufactured by Baoanzhao are likely being imported into the United States.

II. Finding

A. General

Pursuant to 19 U.S.C. 1307 and 19 CFR 12.42(f), it is hereby determined that certain articles described in paragraph II.B., that are mined, produced or manufactured in whole or in part with the use of convict, forced, or indentured labor by the Inner Mongolia Hengzheng Group Baoanzhao Agriculture, Industry, and Trade Co., Ltd. in the People's Republic of China, are being, or are likely to be, imported into the United States. Based upon this determination, the port director may seize the covered merchandise for violation of 19 U.S.C. 1307 and commence forfeiture proceedings pursuant to 19 CFR part 162, subpart E.

B. Articles and Entities Covered by This Finding

This Finding covers stevia leaf (Stevia rebaudiana) extracts, or glycosides classified under subheading 2938.90.0000, Harmonized Tariff Schedule of the United States (HTSUS), that are mined, produced or manufactured wholly or in part by the Inner Mongolia Hengzheng Group Baoanzhao Agriculture, Industry, and Trade Co., Ltd. in the People's Republic of China. This entity is also known by the following names: The Inner Mongolia Hengzheng Group Baoanzhao Agriculture and Trade Co., Ltd.; the Inner Mongolia Autonomous Region Prison Administration Bureau Baoanzhao Agriculture and Trade Co., Ltd.; and the Baoanzhao Prison Farm.

The Acting Secretary of Homeland Security has reviewed and approved this Finding.

Dated: October 14, 2020.

BRENDA B. SMITH,
Executive Assistant Commissioner,
Office of Trade.

[Published in the Federal Register, October 20, 2020 (85 FR 66574)]

MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN NETWORK DEVICES KNOWN AS ACCESS POINTS

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

ACTION: Notice of modification of a ruling letter, and revocation of treatment relating to the tariff classification of a certain network devices known as access points.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying a ruling letter concerning the tariff classification of certain network devices known as access points under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 54, No. 32, on August 19, 2020. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 3, 2021.

FOR FURTHER INFORMATION CONTACT: Tom P. Beris, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0292.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other

information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in Customs Bulletin Vol. 54, No. 32, on August 19, 2020, proposing to modify a ruling letter pertaining to the tariff classification of certain network devices known as access points. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter (NY) N301462, CBP classified network devices referred to as access points in subheading 8517.62.0020, HTSUSA (Annotated), which provides for "Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Switching and routing apparatus."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N301462 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter H304471, set forth in the attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking or modifying any treatment previously accorded by CBP to substantially identical transactions.

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

Dated:

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

Attachment

HQ H304471
October 19, 2020
CLA-2 OT:RR:CTF:EMAIN H304471 TPB
CATEGORY: Classification
TARIFF NO.: 8517.62.0090

CARL W. MERTZ
TP-LINK USA CORP
145 SOUTH STATE COLLEGE BLVD., SUITE 400
BREA, CA 92821

RE: Modification of New York (NY) ruling letter N301462; Classification of network devices; re-classification of Wi-Fi access points

DEAR MR. MERTZ:

In your letter dated October 29, 2018, you requested a tariff classification ruling on certain network devices. The devices concerned are: a cloud controller (model OC200), a wireless dual band access point (model EAP245), a 5GHz 300Mbps 23dBI outdoor CPE access point (model CPE610), and a 2.4GHz wireless outdoor high power access point (model CPE210).

In NY N301462, U.S. Customs and Border Protection (CBP) classified the subject cloud controller in subheading 8517.62.0090, HTSUSA (Annotated), which provides for "Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other." The remaining devices, i.e., the access points, were classified in subheading 8517.62.0020, HTSUSA, which provides for "Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Switching and routing apparatus."

We have determined that all of the network devices subject to N301462 are classifiable in subheading 8517.62.0090, HTSUSA, by application of GRIs 1 and 6. For the reasons set forth below, we hereby modify NY N301462. Notice of the proposed action was published in the Customs Bulletin, Vol. 54, No. 32, on August 19, 2020. No comments were received in response to that notice.

FACTS:

The Omada Cloud Controller (model OC200) is a small form factor device designed to allow centralized management of an access point (AP) network. This device allows management through three methods: direct connection, cloud, or mobile application. It is pre-loaded with TP-Link free management software, and it can be powered via micro-USB or power over Ethernet (POE) (802.3af/at). It also allows for guest networks to be created via various login methods. It incorporates three output ports and one input port.

The AC1750 dual band gigabit ceiling mount access point (model EAP245) features band steering and load balancing. Band steering helps direct devices to the correct band by analyzing the data transfer rate. Load balancing ensures smooth network traffic, especially in a high density environment. The unit has one RJ45 gigabit Ethernet port. The unit can be powered by

POE using 802.11at standards. It incorporates six internal antennas, three of which are 4dBi 2.4GHz, the other three are 4dBi 5GHz.

The 5GHz 300Mbps 23dBI outdoor CPE access point (model CPE610) is powered by passive POE. It has a transmit beam length of nine degrees horizontally and seven degrees vertically requiring line of sight communication to the receiving end. The antenna gain is 23dBI and supports IEEEE 80.211 a/n. Maximum transmit power is 27dBm but is adjustable in increments of 1dBm. Its antenna is a 2x2 MIMO design, and uses a parabolic design to ensure maximum transmission. It is designed to provide long range line of site network access to a remote location. This item generally needs two units, one set up in client mode (receiver) and the other as an access point (transmitter), through which the client side would then be connected to another router, switch or indoor access point that would provide the remote location with internet service.

The 2.4GHz 300Mbps 9dBI outdoor CPE access point (model CPE210) is powered by passive POE. It has a transmit beam length of 65 degrees horizontally and 35 degrees vertically requiring line of sight communication to the receiving end. The device supports IEEEE 80.211 b/g/n. Maximum transmit power is 27dBm but is adjustable in increments of 1dBm. The device has a maximum range of 5 km or 3.14 miles. Its antenna is a 2x2 dual-polarized MIMO design. It is powered by a Qualcomm Atheros 560MHz CPU, and it is designed to provide long range line or site network access to a remote location. This item generally needs two units, one set up in client mode (receiver), and the other as an access point (transmitter), through which the client side would then be connected to another router, switch or indoor access point that would provide the remote location with internet service.

ISSUE:

Whether the network devices at issue should be classified as switching and routing apparatus under the HTSUS.

LAW AND ANALYSIS:

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

The subheadings under consideration are:

8517	Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof:
	Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):

8517.62.00	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:
8517.62.0020	Switching and routing apparatus
8517.62.0090	Other

As indicated by you in a supplemental submission, an access point is a device creating a wireless local area networking (Wi-Fi) and enabling devices based on the IEEE 802.11 to connect to a wired network, in order to receive and transmit data without path selection. It typically connects via a switch to a router (via a wired network) as a standalone device. The access point transmits data over all outgoing ports as originally received. Devices connected to the access point receive all data, and it is up to the device to filter and pick up that which is addressed to it. There are no tables (routing, MAC address, etc.) and no intelligent switching or routing of the data.

Further, CBP has also found information describing access points as devices which provide wireless internet by connecting to a hub, switch, or router. Wireless access points allow computers to gain wireless access to wired networks. These access points act in a similar fashion to cell phone towers; one can move across several different locations and still have wireless access. To share an internet connection, one must connect the access point with a router. Access points are widely used by hotels, airports, and restaurants.

In a wireless local area network (WLAN), an access point is a station that transmits and receives data (sometimes referred to as a transceiver). An access point connects users to other users within the network and also can serve as the point of interconnection between the WLAN and a fixed wire network. Each access point can serve multiple users within a defined network area; as people move beyond the range of one access point, they are automatically handed over to the next one. A small WLAN may only require a single access point; the number required increases as a function of the number of network users and the physical size of the network increase.

To be classified as switching or routing apparatus, the devices must perform switching or routing themselves and not merely rely on an external switching or routing device. Based on the supplemental information provided and the notion that the access points concerned do not act as a switch or a router within the realm of networking terminology, CBP is now of the view that these three access points (models EAP245, CPE210, and CPE610) are properly classified under subheading 8517.62.0090, HTSUS, which provides for "Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other." The general rate of duty will be Free.

The Omada Cloud Controller (model OC200), which is designed to allow centralized management of an access point network is also classified in subheading 8517.62.0090, HTSUS, as indicated in N301462. That portion of the ruling letter is affirmed.

HOLDING:

For the reasons set forth above, the AC1750 dual band gigabit ceiling mount access point (model EAP245), the 5GHz 300Mbps 23dBI outdoor CPE access point (model CPE610), and the 2.4GHz 300Mbps 9dBI outdoor CPE access point (model CPE210) are classified in subheading 8517.62.0090, HTSUS, which provides for "Machines for the reception, conversion & transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other." The column one, general rate of duty is free.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

NY N301462, dated November 20, 2018, is hereby MODIFIED to reflect the analysis above.

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

Sincerely,

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

REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN NETWORKING EQUIPMENT KNOWN AS POWERLINE ADAPTERS

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

ACTION: Notice of revocation of two ruling letters, and revocation of treatment relating to the tariff classification of a certain networking equipment known as powerline adapters.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning tariff classification of networking equipment known as powerline adapters under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was

published in the Customs Bulletin, Vol. 54, No. 34, on September 2, 2020. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 3, 2021.

FOR FURTHER INFORMATION CONTACT: Tom P. Beris, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0292.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in Customs Bulletin, Vol. 54, No. 34, on September 2, 2020, proposing to revoke two ruling letters pertaining to the tariff classification of certain networking equipment known as powerline adapters. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Rulings Letter (NY) N304478 and NY N300884, CBP classified certain networking equipment referred to as powerlines in

subheading 8517.62.0020, HTSUSA (Annotated), which provides for "Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Switching and routing apparatus."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is to revoking NY N304478 and NY N300884 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (HQ) H307923, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated:

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

Attachment

HQ H307923
October 19, 2020
CLA-2 OT:RR:CTF:EMAIN H307923 TPB
CATEGORY: Classification
TARIFF NO.: 8517.62.0090

CARL W. MERTZ
TP-LINK USA CORP
145 SOUTH STATE COLLEGE BLVD., SUITE 400
BREA, CA 92821

RE: Revocation of New York (NY) ruling letters N300884 and N304478; Classification of network devices; re-classification of network range extenders

DEAR MR. MERTZ:

This letter is in reference to New York (NY) ruling letters N300884, dated October 16, 2018 and N304478, dated June 10, 2019, regarding the tariff classification of certain network range extension devices referred to as "powerline adapters" under the Harmonized Tariff Schedule of the United States (HTSUS).

In those rulings, U.S. Customs and Border Protection (CBP) classified the range extenders in subheading 8517.62.0020, HTSUSA, which provides for "Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Switching and routing apparatus."

We have reviewed those rulings and determined that they are incorrect. For the reasons set forth below CBP revokes those ruling letters. Notice of the proposed action was published in the Customs Bulletin, Vol. 54, No. 34, on September 2, 2020. No comments were received in response to that notice.

FACTS:

New York ruling letter N300884 dealt with the classification of network devices referred to as "Network Expansion, Powerline Adapters" (Models: AV600 Powerline Starter Kit - TL-PA4010 KIT, AV2000 2-port Gigabit Pass-through Powerline Starter Kit - TL-PA9020P KIT, AV1000 Gigabit Powerline ac Wi-Fi Kit - TL-WPA7510 KIT).

They each consisted of two units, a base unit and a remote unit. The base unit connects to a user's router via an Ethernet cable. Then the unit is plugged into a household electrical outlet. The remote unit connects to a user's end use device and is plugged into a different household electrical outlet. The home's internal power lines are used to carry the signal and expand the network coverage. Additional adapters can be added to create a greater expanded network. Remote units will connect to end use devices such as televisions, tablets and computers via wired or wireless communication.

New York ruling letter N304478 concerned the classification of a network extension device referred to as the Powerline 1000 – PL1000. The Powerline 1000 – PL1000 is a network expansion/extension device which is also comprised of two separate units: a base unit and a remote unit. The base unit connects to a user's network router via an Ethernet cable. Then the unit is

plugged into a household electrical outlet. The remote unit connects to a user's end use device and is plugged into a different household electrical outlet.

The function of the PL1000 is to route data through a home's internal power lines. By routing data through the existing home wiring system the network coverage can be extended or expanded to areas that may be resistant to a wireless connection or where it may be difficult to run new cable.

ISSUE:

Whether the network devices at issue should be classified as switching and routing apparatus under the HTSUS.

LAW AND ANALYSIS:

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

The subheadings under consideration are:

8517	Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof:
	Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):
8517.62.00	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:
8517.62.0020	Switching and routing apparatus
8517.62.0090	Other

As indicated by you in supplemental submissions, powerline networking is a technology that is used to communicate data through the electrical wiring in the user's house. When installed, it provides a wired connection to devices that cannot otherwise be reached by Ethernet cable or by Wi-Fi.

To be classified as switching or routing apparatus, the devices must perform switching or routing themselves and not merely rely on an external switching or routing device. A routing device performs the traffic directing function. It is used to forward IP packets in a wide area network (WAN) to a destined client in a local area network (LAN) based on reading the network address information in the data packet, which determines the destination. Then using information in its routing table, or routing policy, it actively directs the packet to the next network on its journey. A routing table file is stored in random access memory (RAM) that contains network information.

A network switch is a multiple-Ethernet-port device that physically connects individual network devices in a computer network, so they can com-

municate with one another. It is the key component in a business network, connecting multiple network devices such as: PCs, printers, servers and peripherals, and it associates each device's address with one of the physical ports on the switch.

Unlike a router or a switch, Wi-Fi range extenders have no intelligence and make no decisions as to where the data goes next. They do not contain a software or firmware routing table and cannot read the network address information in the data packet to determine the specific destination of the data packet.

Based on the supplemental information provided and the notion that the powerline adapters do not act as a switch or a router within the realm of networking terminology, CBP is now of the view that these devices are properly classified under subheading 8517.62.0090, HTSUS, which provides for "Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other." The general rate of duty will be Free.

HOLDING:

For the reasons set forth above, the powerline adapters (Models AV600 Powerline Starter Kit - TL-PA4010 KIT, AV2000 2-port Gigabit Passthrough Powerline Starter Kit - TL-PA9020P KIT, AV1000 Gigabit Powerline ac Wi-Fi Kit - TL-WPA7510 KIT, and the Powerline 1000 – PL1000) are classified in subheading 8517.62.0090, HTSUS, which provides for "Machines for the reception, conversion & transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other." The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

New York ruling letters N300884, dated October 16, 2018 and N304478, dated June 10, 2019, are hereby REVOKED.

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

Sincerely,

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

19 CFR CHAPTER I

NOTIFICATION OF TEMPORARY TRAVEL RESTRICTIONS APPLICABLE TO LAND PORTS OF ENTRY AND FERRIES SERVICE BETWEEN THE UNITED STATES AND MEXICO

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

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border. Such travel will be limited to "essential travel," as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on October 22, 2020 and will remain in effect until 11:59 p.m. Eastern Standard Time (EST) on November 21, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary's decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to "essential travel," as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID–19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico posed a "specific threat to human life or national interests."

[1] 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary's decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to "essential travel," as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

The Secretary later published a series of notifications continuing such limitations on travel until 11:59 p.m. EDT on October 21, 2020.[2]

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of the week of October 12, there are over 37 million confirmed cases globally, with over one million confirmed deaths.[3] There are over 7.8 million confirmed and probable cases within the United States,[4] over 178,000 confirmed cases in Canada,[5] and over 809,000 confirmed cases in Mexico.[6]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico poses an ongoing "specific threat to human life or national interests."

U.S. and Mexican officials have mutually determined that non-essential travel between the United States and Mexico poses additional risk of transmission and spread of the virus associated with COVID–19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Mexico, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[7] I have determined that land ports

[2] *See* 85 FR 59669 (Sept. 23, 2020); 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020). DHS also published parallel notifications of the Secretary's decisions to continue temporarily limiting the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to "essential travel." *See* 85 FR 59670 (Sept. 23, 2020); 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020).

[3] WHO, Coronavirus disease 2019 (COVID–19) Weekly Epidemiological Update (Oct. 12, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20201012-weekly-epi-update-9.pdf*.

[4] CDC, COVID Data Tracker (last updated Oct. 15, 2020), available at *https://covid.cdc.gov/covid-data-tracker/*.

[5] WHO, COVID–19 Weekly Epidemiological Update (Oct. 12, 2020).

[6] *Id.*

[7] 19 U.S.C. 1318(b)(1)(C) provides that "[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests," is authorized to "[t]ake any . . . action that may be necessary to

of entry along the U.S.-Mexico border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in "essential travel," as defined below. Given the definition of "essential travel" below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Mexico border shall be limited to "essential travel," which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Mexico in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Mexico);

respond directly to the national emergency or specific threat." On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities "related to Customs revenue functions" were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that "[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat." Congress has vested in the Secretary of Homeland Security the "functions of all officers, employees, and organizational units of the Department," including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of "essential travel" for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Mexico, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Mexico. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EST on November 21, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute "essential travel" under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in "essential travel."

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, has delegated the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

CHAD R. MIZELLE,
Senior Official
Performing the Duties of the General Counsel,
U.S. Department of Homeland Security.

[Published in the Federal Register, October 22, 2020 (85 FR 67275)]

19 CFR CHAPTER I

NOTIFICATION OF TEMPORARY TRAVEL RESTRICTIONS APPLICABLE TO LAND PORTS OF ENTRY AND FERRIES SERVICE BETWEEN THE UNITED STATES AND CANADA

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

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border. Such travel will be limited to "essential travel," as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on October 22, 2020 and will remain in effect until 11:59 p.m. Eastern Standard Time (EST) on November 21, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary's decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to "essential travel," as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID–19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada posed a "specific threat to human life or national interests."

[1] 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary's decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to "essential travel," as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

The Secretary later published a series of notifications continuing such limitations on travel until 11:59 p.m. EDT on October 21, 2020.[2]

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of the week of October 12, there are over 37 million confirmed cases globally, with over one million confirmed deaths.[3] There are over 7.8 million confirmed and probable cases within the United States,[4] over 178,000 confirmed cases in Canada,[5] and over 809,000 confirmed cases in Mexico.[6]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada poses an ongoing "specific threat to human life or national interests."

U.S. and Canadian officials have mutually determined that non-essential travel between the United States and Canada poses additional risk of transmission and spread of the virus associated with COVID–19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Canada, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[7] I have determined that land ports

[2] *See* 85 FR 59670 (Sept. 23, 2020); 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020). DHS also published parallel notifications of the Secretary's decisions to continue temporarily limiting the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to "essential travel." *See* 85 FR 59669 (Sept. 23, 2020); 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020).

[3] WHO, Coronavirus disease 2019 (COVID–19) Weekly Epidemiological Update (Oct. 12, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20201012-weekly-epi-update-9.pdf*.

[4] CDC, COVID Data Tracker (last updated Oct. 15, 2020), available at *https://covid.cdc.gov/covid-data-tracker/*.

[5] WHO, COVID–19 Weekly Epidemiological Update (Oct. 12, 2020).

[6] *Id*.

[7] 19 U.S.C. 1318(b)(1)(C) provides that "[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests," is authorized to "[t]ake any . . . action that may be necessary to

of entry along the U.S.-Canada border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in "essential travel," as defined below. Given the definition of "essential travel" below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Canada border shall be limited to "essential travel," which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Canada in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Canada);

respond directly to the national emergency or specific threat." On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities "related to Customs revenue functions" were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that "[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat." Congress has vested in the Secretary of Homeland Security the "functions of all officers, employees, and organizational units of the Department," including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of "essential travel" for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Canada, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Canada. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EST on November 21, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute "essential travel" under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in "essential travel."

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, has delegated the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

CHAD R. MIZELLE,
Senior Official
Performing the Duties of the General Counsel,
U.S. Department of Homeland Security.

[Published in the Federal Register, October 22, 2020 (85 FR 67276)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Cost Submission

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 20, 2020) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 47978) on August 7, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four

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

Overview of This Information Collection

Title: Cost Submission.

OMB Number: 1651–0028.

Form Number: CBP Form 247.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The information collected on CBP Form 247, Cost Submission, is used by CBP to assist in correctly calculating the duty on imported merchandise. This form includes details on actual costs and helps CBP determine which costs are dutiable and which are not.

This collection of information is provided for by subheadings 9801.00.10, 9802.00.40, 9802.00.50, 9802.00.60 and 9802.00.80 of the Harmonized Tariff Schedule of the United States (HTSUS), and by 19 U.S.C. 1508 through 1509, 19 CFR 10.11–10.24, 19 CFR 141.88 and 19 CFR 152.106.

CBP Form 247 can be found at *http://www.cbp.gov/xp/cgov/toolbox/forms/*.

Estimated Number of Respondents: 1,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,000.

Estimated Time per Response: 50 hours.

Estimated Total Annual Burden Hours: 50,000.

Dated: October 16, 2020.

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

[Published in the Federal Register, October 21, 2020 (85 FR 67005)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Entry of Articles for Exhibition

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 20, 2020) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 47976) on August 7, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Entry of Articles for Exhibition.

OMB Number: 1651–0037.

Form Number: None.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Goods entered for the purpose of exhibit at fairs, or for use in constructing, installing, or maintaining foreign exhibits at a fair, may be free of duty under 19 U.S.C. 1752. In order to substantiate that goods qualify for duty-free treatment, the consignee of the merchandise must provide information to CBP about the imported goods, which is specified in 19 CFR 147.11(c).

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 50.

Estimated Number of Total Annual Responses: 2,500.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 832.

Dated: October 16, 2020.

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

[Published in the Federal Register, October 21, 2020 (85 FR 67005)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 20, 2020) to be assured of consideration.

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

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

at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 47974) on August 7, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement.

OMB Number: 1651–0051.

Form Number: None.

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

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Abstract: In accordance with 19 CFR 146.25 and 146.4, foreign trade zone (FTZ) operators are required to account for zone merchandise admitted, stored, manipulated and removed from FTZs. FTZ operators must prepare a reconciliation report within 90 days after the end of the zone year for a spot check or audit by CBP. In addition, within 10 working days after the annual reconciliation, FTZ operators must submit to the CBP port

director a letter signed by the operator certifying that the annual reconciliation has been prepared, is available for CBP review, and is accurate. Foreign Trade Zones Act, as amended (Title 19 U.S.C. 81a–81u), authorizes these requirements.

Record Keeping Requirements Under 19 CFR 146.4

Estimated Number of Respondents: 276.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 276.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 207.

Certification Letter Under 19 CFR 146.25

Estimated Number of Respondents: 276.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 276.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 92.

Dated: October 16, 2020.

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

[Published in the Federal Register, October 21, 2020 (85 FR 67004)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Crew's Effects Declaration

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

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

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

Comments are encouraged and must be submitted (no later than November 20, 2020) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 47975) on August 7, 2020 allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Crew's Effects Declaration.

OMB Number: 1651–0020.

Form Number: CBP Form 1304.

Current Actions: CBP proposes to extend the expiration date of this information collection. There is a reduction in burden hours due to a reduction in the number of respondents and responses. There is no change to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 1304, *Crew's Effects Declaration,* was developed through an agreement by the United Nations' Intergovernmental Maritime Consultative Organization (IMCO) in conjunction with the United States and various other countries. The form is used as part of the entrance and clearance of vessels pursuant to the provisions of 19 CFR 4.7 and 4.7a, 19 U.S.C. 1431, and 19 U.S.C. 1434. CBP Form 1304 is completed by the master of the arriving carrier to record and list the crew's effects that are onboard the vessel. This form is accessible at *https://www.cbp.gov/newsroom/publications/forms?title=1304.*

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: 60 minutes.

Estimated Total Annual Burden Hours: 188,928.

Dated: October 16, 2020.

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

[Published in the Federal Register, October 21, 2020 (85 FR 67006)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Application for Exportation of Articles Under Special Bond

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 20, 2020) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 47975) on August 7, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to

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

Overview of This Information Collection

Title: Application for Exportation of Articles under Special Bond.

OMB Number: 1651–0004.

Form Number: CBP Form 3495.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 3495, *Application for Exportation of Articles Under Special Bond,* is an application for exportation of articles entered under temporary bond pursuant to 19 U.S.C. 1202, Chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States, and 19 CFR 10.38. CBP Form 3495 is used by importers to notify CBP that the importer intends to export goods that were subject to a duty exemption based on a temporary stay in this country. It also serves as a permit to export in order to satisfy the importer's obligation to export the same goods and thereby get a duty exemption. This form is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=3495&=Apply.*

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 30.

Estimated Number of Total Annual Responses: 15,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 2,000.

Dated: October 16, 2020.

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

[Published in the Federal Register, October 21, 2020 (85 FR 67003)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Declaration of Unaccompanied Articles

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 23, 2020) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 50831) on August 18, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four

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

Title: Declaration of Unaccompanied Articles.

OMB Number: 1651–0030.

Form Number: CBP Form 255.

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

Type of Review: Extension (without change).

Affected Public: Individuals.

Abstract: CBP Form 255, Declaration of Unaccompanied Articles, is completed by travelers arriving in the United States with a parcel or container which is to be sent from an insular possession at a later date. It is the only means whereby the CBP officer, when the person arrives, can apply the exemptions or 5 percent flat rate of duty to all of the traveler's purchases.

CBP Form 255 is authorized by 19 U.S.C. 1202 (Chapter 98, Subchapters IV and XVI) and provided for by 19 CFR 145.12, 145.43, 148.110, 148.113, 148.114, 148.115 and 148.116. A sample of this form can be viewed at *https://www.cbp.gov/newsroom/publications/forms?title=255&=Apply#.*

Type of Collection: CBP Form 255.

Estimated Number of Respondents : 7,500.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 15,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1,250.

Dated: October 19, 2020.

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

[Published in the Federal Register, October 22, 2020 (85 FR 67364)]

U.S. Court of International Trade

Slip Op. 20–145

NEXTEEL Co., Ltd., Plaintiff, and SeAH Steel Corporation, Consolidated Plaintiff, v. United States, Defendant, and United States Steel Corporation, et al., Defendant-Intervenors.

Before: Jennifer Choe-Groves, Judge
Consol. Court No. 18–00083

[Sustaining the U.S. Department of Commerce's remand redetermination following the 2015–2016 administrative review of the antidumping duty order on oil country tubular goods from the Republic of Korea.]

Dated: October 16, 2020

J. David Park, *Henry D. Almond*, *Daniel R. Wilson*, *Leslie C. Bailey*, and *Kang Woo Lee*, Arnold & Porter Kaye Scholer LLP, of Washington, D.C., for Plaintiff NEXTEEL Co., Ltd.

Jeffrey M. Winton and *Amrietha Nellan*, Winton & Chapman PLLC, of Washington, D.C., for Consolidated Plaintiff SeAH Steel Corporation.

Hardeep K. Josan, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, N.Y., for Defendant United States. With her on the brief were *Joseph H. Hunt*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Claudia Burke*, Assistant Director. Of counsel was *Mykhaylo Gryzlov*, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.

Thomas M. Beline, *Myles S. Getlan*, and *James E. Ransdell*, Cassidy Levy Kent (USA) LLP, of Washington, D.C., for Defendant-Intervenor United States Steel Corporation.

Gregory J. Spak, *Frank J. Schweitzer*, *Kristina Zissis*, and *Matthew W. Solomon*, White & Case LLP, of Washington, D.C., for Defendant-Intervenors Maverick Tube Corporation and Tenaris Bay City, Inc.

OPINION AND ORDER

Choe-Groves, Judge:

This action arises out of the final results of the second administrative review of the antidumping duty order on oil country tubular goods from the Republic of Korea ("Korea") conducted by the Department of Commerce ("Commerce"), covering the period from September 1, 2015 to August 31, 2016. *See Certain Oil Country Tubular Goods From the Republic of Korea*, 83 Fed. Reg. 17,146 (Dep't Commerce Apr. 18, 2018) (final results of antidumping duty administrative review; 2015–2016). Before the court are Commerce's Final Results of Redetermination Pursuant to Court Remand, Aug. 3, 2020, ECF No. 96–1 ("*Second Remand Redetermination*"), which the court ordered in *NEXTEEL Co., Ltd. v. United States*, 44 CIT ___, Slip Op.

20–69 (May 18, 2020) ("*NEXTEEL II*"), and Unopposed, Partial Consent Motion for Entry of Judgment, Aug. 28, 2020, ECF No. 98 ("Consent Motion"). For the reasons discussed below, the court sustains the *Second Remand Redetermination* and grants the Consent Motion.

BACKGROUND

The court presumes familiarity with the facts and procedural history of this action. *NEXTEEL Co., Ltd. v. United States*, 43 CIT __, __, 392 F. Supp. 3d 1276, 1283–84 (2019) ("*NEXTEEL I*"), and *NEXTEEL II*, 44 CIT at __, slip op. at *2–5.

In *NEXTEEL I*, the court remanded to Commerce for reconsideration of numerous issues, including Commerce's application of total facts available to Plaintiff NEXTEEL Co., Ltd. ("NEXTEEL"), Commerce's particular market situation analysis, Commerce's classification of proprietary products of Consolidated Plaintiff SeAH Steel Corporation ("SeAH"), and Commerce's decision to deduct SeAH's general and administrative expenses. *NEXTEEL I*, 43 CIT at __, 392 F. Supp. 3d at 1297. Following the first remand by the court, Commerce filed its remand results under protest. Final Results of Redetermination Pursuant to Court Remand, Nov. 5, 2019, ECF No. 81–1. Commerce continued to find that a particular market situation existed in Korea. *Id.* at 18.

In *NEXTEEL II*, the court remanded to Commerce for a second time for reconsideration of Commerce's particular market situation determination. *NEXTEEL II*, 44 CIT at __, slip op. at *21. Commerce filed its *Second Remand Redetermination* under protest, reversed its particular market situation determination, and recalculated the margins of NEXTEEL and SeAH without a particular market situation adjustment. *Second Remand Redetermination* at 3. Commerce recalculated the weighted-average dumping margins, which changed from 5.41% to 3.40% for SeAH, from 46.71% to 18.29% for NEXTEEL, and from 26.06% to 10.85% for the nonexamined companies. *Id*. at 5.

Defendant-Intervenor United States Steel Corporation filed a motion requesting that the court sustain the *Second Remand Redetermination*. Consent Motion. No party opposed the Consent Motion. No party filed comments opposing the *Second Remand Redetermination*.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction under 19 U.S.C. § 1516a(a)(2)(B)(iii) and 28 U.S.C. § 1581(c). The court will hold unlawful any determination, finding, or conclusion found to be unsupported by substantial evidence on the record, or otherwise not in accordance with the law. 19

U.S.C. § 1516a(b)(1)(B)(i). The results of a redetermination pursuant to court remand are reviewed also for compliance with the court's remand order. *See ABB Inc. v. United States*, 42 CIT __, __, 335 F. Supp. 3d 1206, 1211 (2018).

DISCUSSION

Commerce's *Second Remand Redetermination* is consistent with the court's prior opinions and orders in *NEXTEEL I* and *NEXTEEL II*. Commerce has, under respectful protest, reversed its particular market situation determination and recalculated the margins of NEXTEEL and SeAH without a particular market situation adjustment. *Second Remand Redetermination* at 3. The weighted-average dumping margins changed from 5.41% to 3.40% for SeAH, from 46.71% to 18.29% for NEXTEEL, and from 26.06% to 10.85% for the non-examined companies. *Id.* at 5. Because the court concludes that the *Second Remand Redetermination* is in accordance with the law and complies with the court's remand order, the court sustains the *Second Remand Redetermination*.

CONCLUSION

The court sustains the *Second Remand Redetermination*. Accordingly, it is hereby

ORDERED that the Consent Motion, ECF No. 98, is GRANTED; and it is further

ORDERED that the remaining deadlines and opportunities for comments in opposition and in support of the *Second Remand Redetermination*, as specified in Slip Op. 20–69, ECF No. 95, are hereby stricken.

Judgment will be entered accordingly.

Dated: October 16, 2020
New York, New York

/*s*/ *Jennifer Choe-Groves*
JENNIFER CHOE-GROVES, JUDGE

Slip Op. 20–146

VANDEWATER INTERNATIONAL, INC., Plaintiff, v. UNITED STATES, Defendant, and ISLAND INDUSTRIES, Defendant-Intervenor.

Before: Leo M. Gordon, Judge
Court No. 18–00199

[Remanding *Final Scope Ruling* to Commerce to conduct (k)(2) analysis.]

Dated: October 16, 2020

Richard Preston Ferrin, *Dorothy Alicia Hickok*, and *Douglas John Heffner*, Faegre Drinker Biddle & Reath, LLP of Washington, DC, for Plaintiff Vandewater International, Inc.

Joshua Ethan Kurland, Trial Attorney, U.S. Department of Justice, Civil Division, Commercial Litigation Branch, Washington, DC., argued for Defendant United States. On the brief were *Jeffrey Bossert Clarke*, Assistant Attorney General, *Jeanne E. Davidson*, Director, *L. Misha Preheim*, Assistant Director, International Trade Field Office, New York, NY. Of counsel were *John Anwesen* and *Saad Younus Chalchal*, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce of Washington, DC.

Matthew Jon McConkey, Mayer Brown LLP of Washington, DC, for Defendant-Intervenor Island Industries.

OPINION and ORDER

Gordon, Judge:

This opinion addresses the scope of the antidumping duty order on Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, which covers:

> carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

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) ("*Order*"). Plaintiff, Vandewater International Inc., sought a scope determination from the U.S. Department of Commerce ("Commerce") that their products, steel branch outlets used to join sections in fire sprinkler systems, are not covered by the *Order*. Commerce deter-

mined that they were. *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, (Dep't of Commerce Sept. 10, 2018) (final scope ruling on Vandewater's steel branch outlets) ("*Final Scope Ruling*"). For the reasons set forth below, the court holds that Commerce unreasonably concluded that the sources in 19 C.F.R. § 351.225(k)(1) were dispositive on the inclusion of Plaintiff's steel branch outlets within the *Order*, and remands the matter to Commerce to conduct a full scope inquiry and evaluate the factors under 19 C.F.R. § 351.225(k)(2).

I. Standard of Review

The court sustains Commerce's "determinations, findings, or conclusions" unless they are "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). More specifically, when reviewing agency determinations, findings, or conclusions for substantial evidence, the court assesses whether the agency action is reasonable given the record as a whole. *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1350–51 (Fed. Cir. 2006); *see also Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951) ("The substantiality of evidence must take into account whatever in the record fairly detracts from its weight."). Substantial evidence has been described as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *DuPont Teijin Films USA v. United States*, 407 F.3d 1211, 1215 (Fed. Cir. 2005) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). Substantial evidence has also been described as "something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620, (1966). Fundamentally, though, "substantial evidence" is best understood as a word formula connoting reasonableness review. 3 Charles H. Koch, Jr., *Administrative Law and Practice* § 9.24[1] (3d ed. 2020). Therefore, when addressing a substantial evidence issue raised by a party, the court analyzes whether the challenged agency action "was reasonable given the circumstances presented by the whole record." 8A *West's Fed. Forms*, National Courts § 3.6 (5th ed. 2020).

II. Discussion

Commerce may render a scope ruling after a full "scope inquiry," 19 C.F.R. § 351.225(e), or, as Commerce did in this case, on the expedited basis of a party's application and the sources listed in 19 C.F.R. § 351.225(k)(1) (the "descriptions of the merchandise contained in the

petition [for imposition of an antidumping duty order], the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the [International Trade] Commission."). 19 C.F.R. § 351.225(d). Here, Commerce determined that the (k)(1) sources were dispositive and included Vandewater's steel branch outlets within the *Order*.

Had Commerce determined the (k)(1) sources were not "dispositive," Commerce would have conducted a full scope inquiry and evaluated the criteria under § 351.225(k)(2), which include the product's physical characteristics, ultimate purchasers' expectations, the ultimate use of the product, trade channels in which the product is sold, and the manner in which the product is advertised and displayed. 19 C.F.R. § 351.225(k)(2).

In rendering its scope determination Commerce began with a "plain reading" of the *Order*, finding that Vandewater's description of its steel branch outlets matched the description of the butt-weld pipe fittings in the *Order*:

> A plain reading of the scope includes carbon steel butt-weld pipe fittings that have an inside diameter of fourteen inches or less, which require a weld to be permanently attached to a piping system. Based on Vandewater's description, and the samples provided, the steel branch outlets are made of carbon steel, have an inside diameter of less than fourteen inches, and are used to join sections in fire sprinkler piping systems where conditions require permanent, welded connections. Thus, we find that Vandewater's description of its steel branch outlets matches the description of the scope covering butt-weld pipe fittings.

Final Scope Ruling at 9. Commerce omitted from its "plain reading" the scope language that distinguishes "fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings)." Plaintiff's products have threaded or grooved ends on their non-weldable end. It is therefore not plainly apparent from the language of the *Order* whether a steel branch outlet qualifies as a butt-weld fitting covered by the *Order* or not. They may be covered: they are made of carbon steel, have an inside diameter of less than fourteen inches, and are used to join sections in fire sprinkler piping systems where conditions require a permanent, welded connection. They also may not be covered: they have a non-weldable, threaded or grooved end, and according to Vandewater, the weldable end is never joined to the sprinkler system via a true "butt-weld." The language of the *Order* itself simply does not resolve the issue of whether Vandewater's steel branch outlets are covered.

As for the (k)(1) sources, Commerce long ago included steel branch outlets virtually identical to Vandewater's within the scope of a companion antidumping duty order on butt-weld fittings from another country. *Carbon Steel Butt-Weld Pipe Fittings from Taiwan*, (Dep't of Commerce Mar. 25, 1992) (final scope ruling on Sprink, Inc. exclusion request) ("*Sprink Scope Ruling*"); *see also Certain Carbon Steel Butt-Weld Pipe Fittings from Taiwan*, 51 Fed. Reg. 45,152 (Dep't of Commerce Dec. 17, 1986) ("*Taiwan Butt-Weld Order*"). In the *Final Scope Ruling* here, Commerce noted this prior ruling:

> Sprink's scope inquiry request stated that "{i}t appears that the definition of a butt-weld fitting is one that requires welding as a method of attachment for all connections. The Sprink-let does require that it be welded onto the outside of the pipe, but the connection for the joining pipe is either threaded or grooved.
>
> Commerce specifically stated in its ruling, "the order does not require that all pipe fitting connections be welded." Commerce further stated that, "although the initial connection is obtained because of threading or grooving, the Sprink-let, like other products subject to this order, is permanently joined by welding." Commerce concluded that, "{a}ccording to the product descriptions presented above, a pipe fitting with beveled edges that is permanently joined through welding falls within the scope of the order on carbon steel butt-weld pipe fittings from Taiwan. Because the Sprink-let, possesses these characteristics, we determine that the Sprink-let, imported by Sprink, Inc. is within the scope of the antidumping duty order on carbon steel butt-weld pipe fittings from Taiwan."

Final Scope Ruling at 5–6 (footnotes omitted). For over 25 years, then, Commerce has treated steel branch outlets as butt-weld fittings. That would seem to be dispositive. Commerce, however, for some reason, chose to dismiss its *Sprink Scope Ruling* as nonbinding:

> . . . We agree that the products at issue in the Sprink Scope Ruling were essentially physically identical to Vandewater's steel branch outlets. *However*, we note that Commerce analyzed those products under the *Taiwan Butt-Weld Order* and not the *China Butt-Weld Order*. We recognize that some of the language in both orders is the same, but as Vandewater points out, there is also language unique to the *China Butt-Weld Order*. *Accordingly, we are not bound by the agency's analysis in the Sprink Scope Ruling*, although we not [sic] that here, as in that case, we have concluded that the merchandise is covered by the scope of

> an antidumping duty order on "butt-weld pipe fittings" because the merchandise is permanently joined by welding.

Final Scope Ruling at 11 (emphasis added).

Commerce chose instead to look for support in its *King Scope Ruling* that fittings with only one weldable end were covered by the *Order*. *Id.* at 9 (citing *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China* (Dep't of Commerce Oct. 20, 2009) ("*King Scope Ruling*"). The *King Scope Ruling*, however, dealt with subject butt-weld fittings used in applications other than pressurized piping systems—as handrails, fencing, and guardrails—it did not address dual-nature fittings like Vandewater's steel branch outlets. Commerce's reliance on the *King Scope Ruling*, which has no facial applicability or relevance to Vandewater's branch outlets, and Commerce's eschewing the *Sprink Scope Ruling*, signals to the court that something is not quite right with Commerce's (k)(1) analysis.

The court was further confused by the balance of Commerce's (k)(1) analysis. Searching for dispositive support among the (k)(1) sources to cover the steel branch outlets, Commerce identified two quotes, one from the petition and one from the U.S. International Trade Commission ("ITC") sunset review. The petition language reads: "{t}he edges of finished butt-weld fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the 'bead' of the weld which joins the fitting to the pipe." *Final Scope Ruling* at 9–10 (quoting Petitioners' Letter, "In the Matter of Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China and from Thailand," dated May 22, 1991 (Petition)). The quoted language contemplates beveling on *both* parts of the assembled pipe—"{t}he edges . . . are beveled, so that when a fitting is placed against the end of a pipe (*the ends of which have also been beveled*) . . .." Vandewater pointed out to Commerce that its branch outlets, although beveled on one end, do not join to a beveled end on the header pipe. The quoted petition language, which contemplates beveling on both parts of the assembled pipe, is therefore not descriptive of the actual physical characteristics of Vandewater's steel branch outlets.

The quoted language Commerce relied upon from the ITC sunset review suffers from the same problem as the petition language—it contemplates beveling on both parts of the assembled pipe: "When placed against the end of a beveled pipe or another fitting, the beveled edges form a shallow channel that accommodates the 'bead' of the weld that fastens the two adjoining pieces." *Final Scope Ruling* at 10

(quoting *Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand*, Inv. Nos. 731-TA308–310 and 520–521, at I-4 (Fourth Review), USITC Pub. 4628 (Aug. 2016)). Again, though, Vandewater's branch outlets are welded to header pipe, which is not, apparently, beveled at the weld. The quoted sunset review language is therefore not descriptive of the actual physical characteristics of Vandewater's steel branch outlets.

Commerce also highlights butt-weld caps as an example of a butt-weld fitting that has only one weldable end. *Id.* at 10. A butt-weld cap though does not also have threads or grooves, problematical attributes that are expressly excluded from the *Order*.

Other than the *Sprink Scope Ruling*, which Commerce dismisses as non-binding, the other (k)(1) sources Commerce relied upon as dispositive (the *King Scope Ruling*, the petition language, and the language from the ITC sunset review) do not really tell the court anything about the inclusion of steel branch outlets within the scope of the *Order*. Commerce's determination that the (k)(1) sources are dispositive is therefore not reasonable (unsupported by substantial evidence).

For whatever reason Commerce does not have much confidence in its *Sprink Scope Ruling*. Given that posture, the court believes that Commerce must consider the factors under (k)(2) to determine whether Vandewater's steel branch outlets are within the scope of the *Order*. Accordingly, it is hereby

ORDERED that Commerce's determination that the (k)(1) materials are dispositive of the inclusion of Vandewater's steel branch outlets within the scope of the *Order* is unreasonable; it is further

ORDERED that this matter is remanded to Commerce to conduct a scope inquiry to evaluate the factors under (k)(2); it is further

ORDERED that Commerce shall file its remand results once the scope inquiry is completed; and it is further

ORDERED that, if applicable, the parties shall file a proposed scheduling order with page limits for comments on the remand results no later than seven days after Commerce files its remand results with the court.

Dated: October 16, 2020
New York, New York

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

Slip Op. 20–147

HUSTEEL CO., LTD., Plaintiff, and SEAH STEEL CORPORATION, HYUNDAI STEEL COMPANY, and NEXTEEL CO., LTD., Consolidated Plaintiffs, v. UNITED STATES, Defendant, and WHEATLAND TUBE COMPANY, Defendant-Intervenor.

Before: Jennifer Choe-Groves, Judge
Consol. Ct. No. 19–00107

[Sustaining in part and remanding in part the U.S. Department of Commerce's final results in the 2016–2017 administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea.]

Dated: October 19, 2020

Donald B. Cameron, *Julie C. Mendoza*, *R. Will Planert*, *Brady W. Mills*, *Mary S. Hodgins*, *Eugene Degnan*, and *Sabahat Chaudhary*, Morris, Manning & Martin LLP, of Washington, D.C., for Plaintiff Husteel Co., Ltd.

Jeffrey M. Winton and *Amrietha Nellan*, Winton & Chapman PLLC, of Washington, D.C., for Consolidated Plaintiff SeAH Steel Corporation.

Robert G. Gosselink and *Jarrod M. Goldfeder*, Trade Pacific PLLC, of Washington, D.C., for Consolidated Plaintiff Hyundai Steel Company.

J. David Park, *Henry D. Almond*, *Daniel R. Wilson*, *Leslie C. Bailey*, and *Kang Woo Lee*, Arnold & Porter Kaye Scholer LLP, of Washington, D.C., for Consolidated Plaintiff NEXTEEL Co., Ltd.

Joshua E. Kurland, Trial Attorney, U.S. Department of Justice, Civil Division, Commercial Litigation Branch, of Washington, D.C., for Defendant United States. With him on the brief were *Joseph H. Hunt*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *L. Misha Preheim*, Assistant Director. Of counsel on the brief was *Elio Gonzalez*, Attorney, U.S. Department of Commerce, Office of the Chief Counsel for Trade Enforcement & Compliance.

Roger B. Schagrin, *Elizabeth J. Drake*, and *Christopher T. Cloutier*, Schagrin Associates, of Washington, D.C., for Defendant-Intervenor Wheatland Tube Company.

OPINION AND ORDER

Choe-Groves, Judge:

Plaintiff Husteel Co., Ltd. ("Husteel") and Consolidated Plaintiffs SeAH Steel Corporation ("SeAH"), Hyundai Steel Company ("Hyundai Steel"), and NEXTEEL Co., Ltd. ("NEXTEEL") (collectively, "Plaintiffs") bring this consolidated action challenging the U.S. Department of Commerce's ("Commerce") final results in the 2016–2017 administrative review of the antidumping duty order on circular welded non-alloy steel pipe ("CWP") from the Republic of Korea ("Korea"). *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea* ("*Final Results*"), 84 Fed. Reg. 26,401 (Dep't Commerce June 6, 2019) (final results of administrative review; 2016–2017), PD 180, and accompanying Issues & Decision Mem. for the Final Results of the 2016–2017 Admin. Review of the Antidumping Duty Order on

Circular Welded Non-Alloy Steel Pipe from the Republic of Korea[1] ("Final IDM") (May 30, 2019), ECF No. 20–5, PD 173. Before the court are Plaintiffs' Rule 56.2 motions for judgment on the agency record. Mot. Pl. [SeAH] J. Agency R., ECF No. 26; Br. [SeAH] Supp. Rule 56.2 Mot. J. Agency R., ECF No. 26–1 ("SeAH Br.")[2]; Pl. [Husteel]'s Mot. J. Agency R., ECF No. 27; Pl. [Husteel]'s Br. Supp. Mot. J. Agency R., ECF No. 27–2 ("Husteel Br."); Rule 56.2 Mot. J. Agency R. Consol. Pl. [NEXTEEL], ECF No. 28; Mem. Supp. Consol. Pl. [NEXTEEL]'s Rule 56.2 Mot. J. Agency R., ECF No. 28–2 ("NEXTEEL Br.")[3]; Consol. Pl.'s Rule 56.2 Mot. J. Agency R., ECF Nos. 29, 30; Mem. Supp. Rule 56.2 Mot. Consol. Pl. [Hyundai Steel] J. Agency R., ECF Nos. 29–1, 30–1 ("Hyundai Br."). For the following reasons, the court sustains in part and remands in part the *Final Results*.

ISSUES PRESENTED

The court reviews the following issues:

(1) Whether Commerce's particular market situation adjustment to the cost of production when conducting a sales-below-cost test is in accordance with the law;

(2) Whether Commerce's particular market situation determination is in accordance with the law;

(3) Whether Commerce's differential pricing methodology is in accordance with the law; and

(4) Whether Commerce's treatment of Hyundai Steel (Pipe Division) as a separate entity is supported by substantial evidence in the record.

BACKGROUND

Commerce invited requests for administrative review of the antidumping duty order of CWP from Korea for the period covering November 1, 2016 to October 31, 2017. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 82 Fed. Reg. 50,620, 50,621 (Dep't Commerce Nov. 1, 2017) (opportunity to request administrative review), PD 1. Hyundai Steel and Defendant-Intervenor Wheatland Tube Company ("Wheatland") timely re-

[1] Citations to the administrative record reflect the public record ("PD") document numbers.

[2] SeAH incorporates Husteel's and Hyundai Steel's arguments by reference as to particular market situation and differential pricing, and does not make any independent arguments. *See* SeAH Br. 3.

[3] NEXTEEL incorporates Husteel's and Hyundai Steel's arguments by reference as to particular market situation and does not make any independent arguments. *See* NEXTEEL Br. 4.

quested review. Hyundai Steel's Req. for Admin. Review, PD 3 (Nov. 28, 2017); Wheatland's Req. for Admin. Review ("Wheatland's Req."), PD 4 (Nov. 30, 2017). Wheatland included Hyundai Steel (Pipe Division) in its list of proposed respondents and did not separately include Hyundai Steel. Wheatland Req. 3.

Commerce initiated this administrative review. *Initiation of Antidumping and Countervailing Duty Administrative Reviews* ("*Initiation Notice*"), 83 Fed. Reg. 1329, 1331 (Dep't Commerce Jan. 11, 2018), PD 18. Hyundai Steel and Hyundai Steel (Pipe Division) were identified separately in the *Initiation Notice*. *Id.* Commerce selected Husteel and Hyundai Steel as mandatory respondents. Resp't Selection Mem. 5, PD 19 (Feb. 20, 2018).

Wheatland submitted a particular market situation allegation on July 12, 2018. *See* Letter Re: Rejection of Wheatland's July 12, 2018 Submission 1, PD 82 (Aug. 20, 2018). Commerce rejected this submission for failing to comport with regulation requirements and relate to the instant period of review. *Id.* at 1–2.

Wheatland re-submitted the particular market situation allegation. Wheatland's Re-Submitted Allegation, PD 88–104 (Aug. 27, 2018). Citing Commerce's determinations of a particular market situation in Korea in previous administrative reviews covering the period of review from 2015 to 2016[4], Wheatland asserted that the particular market situation continued to exist during the instant 2016 to 2017 period of review. *Id.* at 1–2. In support of its allegation, Wheatland attached several documents, including: Wheatland's October 16, 2017 allegation submitted in *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; 2015–2016* ; a World Trade Organization report that "indicates the distortions Commerce has previously found to exist in Korea have not gone away;" a Korean government document

[4] Wheatland cited Commerce's final results in *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 83 Fed. Reg. 27,541 (Dep't Commerce June 13, 2018) (final results of administrative review; 2015–2016); *Welded Line Pipe From the Republic of Korea*, 83 Fed. Reg. 33,919 (Dep't Commerce July 18, 2018) (final results of administrative review; 2015–2016); and *Certain Oil Country Tubular Goods From the Republic of Korea*, 83 Fed. Reg. 17,146 (Dep't Commerce Apr. 18, 2018) (final results of administrative review; 2015–2016). Wheatland's Re-Submitted Allegation 1 n.1. Commerce's particular market situation determination in the final results in *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; 2015–2016* was remanded as unsupported by substantial evidence. *Hyundai Steel Co. v. United States*, 43 CIT __, __, 415 F. Supp. 3d 1293, 1299 (2019). Commerce's particular market situation determination in the final results in *Welded Line Pipe From the Republic of Korea; 2015–2016* was remanded as unsupported by substantial evidence. *Husteel Co. v. United States*, 44 CIT __, __, 426 F. Supp. 3d 1376, 1392 (2020). Commerce's particular market situation determination in the final results in *Certain Oil Country Tubular Goods From the Republic of Korea; 2015–2016* was remanded twice as unsupported by substantial evidence. *NEXTEEL Co. v. United States*, 43 CIT __, __, 392 F. Supp. 3d 1276, 1288 (2019); *NEXTEEL Co. v. United States*, 44 CIT __, __, Slip Op. 20–69, at *21 (May 18, 2020).

purporting to demonstrate strategic alliances affecting the Korean pipe market; and a Commerce document "indicating that Chinese imports remained a significant factor in the Korean steel market." *Id.* at 3–4. Wheatland argued that the allegation need not be restricted to the instant period of review. *Id.* at 2 ("Commerce's letter of August 20, 2018 also asks for clarification of 'whether and how the information submitted in support of the [particular market situation] allegation is relevant to the current POR' or the provision of 'additional information that is relevant to this POR.' This request is misguided."). Analogizing particular market situation determinations to non-market economy determinations, Wheatland asserted that once Commerce makes a particular market situation determination, the respondents in subsequent administrative reviews should be required "to show that something had changed such that a re-examination of Commerce's prior findings is merited." *Id.* at 2–3. Wheatland contended that the burden was on the respondents to submit evidence of changes in the factors that formed the basis of Commerce's prior determinations regarding a particular market situation in Korea, namely: hot-rolled steel coil subsidies, Chinese hot-rolled steel coil imports, strategic alliances between Korean companies, and electricity subsidies. *See id.* at 3. Commerce accepted Wheatland's resubmission. Letter Setting Deadline for Factual Information, PD 107 (Sept. 14, 2018).

Commerce calculated preliminary dumping margins of 8.47% for Hyundai Steel and the all-others rate of 10.56% for Hyundai Steel (Pipe Division). *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea* ("*Preliminary Results*"), 83 Fed. Reg. 63,619, 63,620 (Dep't Commerce Dec. 11, 2018) (preliminary results of administrative review; 2016–2017), PD 143. Commerce determined that a particular market situation existed in Korea that distorted the cost of production of CWP and applied an upward adjustment to the cost of production based on subsidy rates of hot-rolled steel coil. Decision Mem. for the Prelim. Results of Antidumping Duty Admin. Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: 2016–2017 ("Prelim. DM") 9–16, PD 135 (Dec. 3, 2018) (citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea*, 81 Fed. Reg. 53,439 (Dep't Commerce Aug. 12, 2016) (final affirmative determination), *as amended*, 81 Fed. Reg. 67,960 (Dep't Commerce Oct. 3, 2016)). Commerce conducted a sales-below-cost test and disregarded certain below-cost sales. Prelim. DM IX, F, 2–3 (Dep't Commerce Dec. 3, 2018). Commerce calculated normal value from the remaining above-cost home market sales for mandatory respondents Hyundai Steel and Husteel. *Id.* at 16.

In the *Final Results*, Commerce used the methodology applied in the *Preliminary Results* and modified the amount of the particular market situation adjustment to the cost of production according to the subsidy amount determined in *POSCO v. United States*, 43 CIT __, 378 F. Supp. 3d 1348 (2019). Final IDM 3. Commerce assigned weighted-average dumping rates of 10.91% for Husteel, 8.14% for Hyundai Steel, and the all-others rate of 9.53% for NEXTEEL and Hyundai Steel (Pipe Division). *Final Results*, 84 Fed. Reg. at 26,402.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction under 19 U.S.C. § 1516a(a)(2)(B)(iii) and 28 U.S.C. § 1581(c), which grant the court authority to review actions contesting the final results of an administrative review of an antidumping duty order. The court will uphold Commerce's determinations unless they are unsupported by substantial record evidence, or otherwise not in accordance with the law. 19 U.S.C. § 1516a(b)(1)(B)(i).

DISCUSSION

I. Particular Market Situation

A. Governing Law

Commerce determines antidumping duties by calculating the amount by which the normal value of subject merchandise exceeds the export price or the constructed export price for the merchandise. 19 U.S.C. § 1673. When reviewing antidumping duties in an administrative review, Commerce must determine: (1) the normal value and export price or constructed export price of each entry of the subject merchandise, and (2) the dumping margin for each such entry. *Id.* § 1675(a)(1)(B), (a)(2)(A). The statute dictates the steps by which Commerce may calculate normal value "to achieve a fair comparison" with export price or constructed export price. *Id.* § 1677b(a).

First, the statute specifies the methodology for Commerce to determine which sales should be considered and disregarded in calculating normal value. Normal value is "the price at which the foreign like product is first sold . . . in the exporting country . . . in the ordinary course of trade." *Id.* § 1677b(a)(1)(B)(i). Sales outside the ordinary course of trade are excluded from normal value. "Ordinary course of trade" is defined in Section 1677(15) as excluding: (1) sales made at less than the cost of production, and (2) sales that cannot be compared properly with the export price or constructed export price due to a

particular market situation. *Id.* § 1677(15)(A), (C). To determine whether "sales . . . have been made at prices that represent less than the cost of production," the statute directs Commerce to conduct the sales-below-cost test. *Id.* § 1677b(b)(1). The cost of production is defined by statute to include the cost of materials and processing, amounts for selling, general, and administrative expenses, and the cost of all containers and expenses incidental for shipment. *Id.* § 1677b(b)(3). Sales that Commerce determines, by application of the sales-below-cost test, were made at prices below the cost of production or that Commerce determines were made in a particular market situation, are outside the ordinary course of trade and are disregarded from the calculation of normal value. *See id.* § 1677b(b)(1), (a)(1)(B)(i). "Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade." *See id.* §§ 1677b(a)(1)(B)(i), (b)(1); 1677(15)(A), (C).

Second, when using market prices to determine normal value, Commerce may make certain adjustments to the remaining home market prices. The statute lists authorized adjustments for incidental shipping, delivery expenses, and direct taxes; and for differences between the subject merchandise and foreign like products in quantity, circumstances of sale, or level of trade. *Id.* § 1677b(a)(6), (7).

Third, when using home market sales for normal value, if Commerce cannot determine the normal value of the subject merchandise based on home market sales, then Commerce may use qualifying third-country sales or a constructed value as a basis for normal value. *Id.* § 1677b(a)(4), (a)(1)(B)(ii), (b)(1). Constructed value represents: (1) the cost of materials and fabrication or other processing of any kind used in producing the merchandise; (2) the actual amounts incurred and realized for selling, general, and administrative expenses, and for profits, in connection with the production and sales of a foreign like product, in the ordinary course of trade, for consumption in the foreign country; and (3) the cost of packing the subject merchandise. *Id.* § 1677b(e). When calculating constructed value, if Commerce determines that 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, [then] [Commerce] may use . . . any other calculation methodology." *Id.*

B. Unauthorized Adjustment to the Cost of Production for the Sales-Below-Cost Test

For purposes of determining whether sales were made at less than cost, in this case Commerce adjusted the reported costs of production

of hot-rolled steel coil, a primary CWP input, based on a determination that a particular market situation in Korea continues to distort the cost of hot-rolled steel coil. Final IDM 6; Prelim. DM 16. Defendant argues that "the statutory language and structure support Commerce's interpretation that it has authority to perform a cost-based particular market situation analysis when conducting the sales-below-cost test in a case like this one." Def.'s Resp. Pls.' Mots. J. Agency R. ("Def. Opp'n") 16, ECF No. 33. Plaintiffs counter that the statute does not permit a particular market situation adjustment in the course of determining whether home market sales were made at less than the cost of production. Hyundai Br. 12; Husteel Br. 27. Wheatland contends that upon a determination that a particular market situation distorts the cost of production, Commerce is authorized in Section 1677b(e)(1) to use "any other calculation methodology." Resp. Br. Def.-Intervenor [Wheatland] 22, ECF No. 34. As this Court has held repeatedly, the statute does not authorize a particular market situation adjustment to the cost of production when Commerce applies the sales-below-cost test to determine which home market sales to exclude from the calculation of normal value. *See Saha Thai Steel Pipe Pub. Co. v. United States*, 43 CIT __, __, 422 F. Supp. 3d 1363, 1368–70 (2019); *Husteel Co. v. United States*, 44 CIT __, __, 426 F. Supp. 3d 1376, 1383–89 (2020); *Borusan Mannesmann Boru Sanayi Ve Ticaret A.Ş. v. United States* ("*Borusan*"), 44 CIT __, __, 426 F. Supp. 3d 1395, 1411–12 (2020).

Here, Commerce applied an adjustment to the cost of production calculation set forth in Section 1677b(b)(3) for purposes of the sales-below-cost test pursuant to Section 1677b(b)(1). *See* Prelim. DM 9–16; Final IDM 3. Commerce relies mistakenly on Section 504 of the Trade Preferences Extension Act of 2015 ("TPEA"), Pub. L. No. 114–27, 129 Stat. 362, for the authority to adjust the cost of production for the sales-below-cost test. Commerce explains that:

> The term "ordinary course of trade," defined in section 771(15) of the Act, includes situations in which "the administering authority determines that the [particular market situation] prevents a proper comparison of normal value with the export price or constructed export price." Thus, where a [particular market situation] affects the [cost of production] of the foreign like product because it distorts the cost of inputs, it is reasonable to conclude that such a situation may prevent a proper comparison of the export price with normal value based on home market prices just as it would when normal value is based on [constructed value]. The claim that an examination of a [particular market situation] for purposes of the sales-below-cost test goes

> beyond the plain language of the Act fails to consider that the provision at issue, section 773(e) of the Act, specifically includes the term "ordinary course of trade." Thus, the definition of that term, again, found in section 771(15) of the Act, is integral to that [particular market situation] provision. Accordingly, we disagree with the argument that Commerce cannot analyze a [particular market situation] claim in determining whether a company's comparison-market sale prices were below cost, and therefore, are outside the "ordinary course of trade."

Final IDM 7. Commerce exercised "discretion to use 'any other calculation methodology' if costs are distorted by a [particular market situation], including for the purposes of [cost of production] . . . ." *Id.* at 8. In other words, Commerce made a particular market situation adjustment to costs based on Section 1677b(e). Commerce asserts that the cost-based particular market situation analysis and alternative calculation methodology set forth in Section 1677b(e) are available whether Commerce bases normal value on home market sales or constructed value. Commerce and Defendant also assert that the sales-below-cost test set forth in Section 1677b(b)(1), by relying on the phrase "ordinary course of trade" defined in Section 1677(15)(C) as excluding sales made in a particular market situation, authorizes Commerce to conduct the particular market situation analysis and adjust costs based on Sections 1677b(b)(1) and 1677(15)(C). Final IDM 7; Def. Opp'n 16.

Section 504 of the TPEA amended the statutory provisions governing constructed value. The amendment authorized Commerce to use alternative cost methodologies when computing constructed value after making a particular market situation determination. The amended language provides:

> [F]or purposes of paragraph (1) [in reference to calculating constructed value] 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 [Commerce] may use another calculation methodology under this subtitle or any other calculation methodology.

19 U.S.C. § 1677b(e). In other words, the amended statute gives Commerce discretion to adjust the cost of production calculation methodology when determining constructed value if Commerce determines that a particular market situation exists. *See id.* Commerce cannot rely on Section 1677b(e) when, as here, Commerce bases normal value on home market sales. No part of the statute allows Commerce to use any other methodology when market sales are used

for normal value. *See Saha Thai Steel Pipe Pub. Co.*, 43 CIT at __, 422 F. Supp. 3d at 1368–70; *Husteel Co.*, 44 CIT at __, 426 F. Supp. 3d at 1383–89; *Borusan*, 44 CIT at __, 426 F. Supp. 3d at 1411–12. The "any other methodology" language is reserved solely for when normal value is determined by constructed value. *Husteel Co.*, 44 CIT at __, 426 F. Supp. 3d at 1388.

As to Sections 1677b(b)(1) and 1677(15)(C), Defendant argues that Section 1677b(b)(1)'s reference to the phrase "ordinary course of trade" authorizes Commerce to conduct a cost-based particular market situation analysis and adjustment in the course of the sales-below-cost test. Def. Opp'n 16. Section 1677b(b)(1) provides:

(b) Sales at less than cost of production.

> (1) Determination; sales disregarded. Whenever the administering authority has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of that product, the administering authority shall determine whether, in fact, such sales were made at less than the cost of production. If the administering authority determines that sales made at less than the cost of production—
>
> (A) have been made within an extended period of time in substantial quantities, and
>
> (B) were not at prices which permit recovery of all costs within a reasonable period of time,
>
> such sales may be disregarded in the determination of normal value. Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the merchandise.

19 U.S.C. § 1677b(b)(1). Section 1677b(b)(1) sets forth the sales-below-cost test based on the calculation specified in Section 1677b(b)(3) to confirm that sales were made at less than the cost of production. Within Section 1677b(b) for "Sales at less than cost of production," the subsection 1677b(b)(1) for "Determination; sales disregarded" authorizes Commerce to disregard those below-cost sales as outside the ordinary course of trade. *Id.* § 1677b(b)(1). The plain language of the reference to "ordinary course of trade" provides that sales on which normal value are based must be in the ordinary course

of trade. *Id.* § 1677b(b)(1), (a)(1)(B)(i). Sales made at less than cost, between affiliates, and in a particular market situation are excluded from the definition of "ordinary course of trade" in Section 1677(15). Thus, sales in those three categories are disregarded for purposes of calculating normal value based on market sales. Nothing in the statute grants Commerce the authority to modify the sales-below-cost test to permit a particular market situation analysis or adjustment, and the specificity of the sales-below-cost test leaves no ambiguity. *See Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.").

In sum, although Section 504 of the TPEA amended Section 1677b(e) for "Constructed Value" to grant Commerce discretion to use an alternative calculation methodology, and Section 1677(15) for "Ordinary course of trade" to grant Commerce an additional ground on which it may disregard sales from the normal value calculation when using home market sales, the Section 504 amendment did not amend Section 1677b(b), which sets out the calculation of the cost of production for the sales-below-cost test to determine whether and which sales should be disregarded as outside the ordinary course of trade when normal value is based on home market sales. "[W]here 'Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" *Thomas v. Nicholson*, 423 F.3d 1279, 1284 (Fed. Cir. 2005) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). Thus, the statute authorizes Commerce to disregard certain sales when basing normal value on home market sales, or to use an alternative calculation methodology upon a cost-based particular market situation determination when basing normal value on constructed value.

Here, however, Commerce applied a cost-based particular market situation adjustment for purposes of the sales-below-cost test of Section 1677b(b)(1), while basing normal value on home market sales. The statute does not authorize Commerce to adjust the cost of production as an alternative calculation methodology when using normal value based on home market sales under Section 1677b(e) as claimed by Commerce. The statute also does not authorize Commerce to adjust the cost of production for purposes of the sales-below-cost test under Sections 1677b(b)(1) and 1677(15)(C) as claimed by Commerce. Section 1677b(e) applies only when Commerce bases normal value on constructed value. Because Commerce based normal value on home market sales here, not constructed value, Section 1677b(e) is inappli-

cable. Nothing in Sections 1677b(b)(1) and 1677(15)(C) authorizes Commerce to adjust the cost of production for the sales-below-cost test. The court concludes, therefore, that Commerce's particular market situation adjustment to the cost of production is not in accordance with the law. Because Commerce may not adjust the cost of production when using normal value based on home market sales, the court does not consider the lawfulness or reasonableness of Commerce's adjustment calculation. *See* Husteel Br. 29–33; Hyundai Br. 20–28.

C. Unauthorized Particular Market Situation Determination

Commerce determined that a particular market situation in Korea distorting the cost of producing CWP continued during the period of review, based on the cumulative impact of "(1) subsidization of Korean hot-rolled steel products by the Korean government; (2) the distortive pricing of unfairly traded Chinese hot-rolled steel coil; (3) strategic alliances between Korean hot-rolled steel coil suppliers and Korean CWP producers; and (4) distortive government control over electricity prices in Korea." Prelim. DM 12; Final IDM 11–16. Commerce determined that "the circumstances present in the previous review . . . have remained largely unchanged and . . . due to the cumulative impact of those factors, a particular market situation exists in Korea which distorts the cost of production of CWP." Final IDM 11. Plaintiffs argue that the record does not support Commerce's particular market situation determination, as Commerce relied substantially on record documents from prior administrative reviews that this court found did not support the particular market situation determinations in those prior administrative reviews. Husteel Br. 15–16; Hyundai Br. 11.

Here, Commerce based its particular market situation determination on distortions in the cost of hot-rolled steel coil, a primary CWP input. Final IDM 6. Commerce explained:

> Section 504 of the TPEA added the concept of [particular market situation] in the definition of the term "ordinary course of trade," for purposes of constructed value under section [1677b(e)], and through these provisions for purposes of the [cost of production] under section [1677b(b)(3)]. Section 773(e) of the TPEA states that "if a particular market situation exists such that the cost of material 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 the subtitle or any other calculation methodology." Thus, under section 504 of the TPEA, Congress has

> given Commerce the authority to determine whether a [particular market situation] exists within the foreign market from which the subject merchandise is sourced and to determine whether the cost of materials, fabrication, or processing of such merchandise fail to accurately reflect the [cost of production] in the ordinary course of trade.

Id. In other words, Commerce made the particular market situation determination under Section 1677b(e) based on the assertion that Section 1677b(e)'s reference to "ordinary course of trade" incorporates Section 1677b(e) into the cost of production calculation in Section 1677b(b)(3).

As discussed in the previous section, Section 1677b(e) applies expressly when Commerce bases normal value on constructed value. 19 U.S.C. § 1677b(e). Nothing in the statute can be read to authorize a cost-based particular market situation determination when Commerce bases normal value on home market sales. The statute does not provide for a cost-based particular market situation analysis when using home market sales to calculate normal value. Commerce made an unlawful particular market situation cost-based determination in this case, while basing normal value on home market sales. The court concludes that Commerce's cost-based particular market situation determination is not in accordance with the law, and the court thus does not consider whether Commerce's particular market situation determination is supported by substantial evidence in the record.

II. Differential Pricing Methodology

Husteel and SeAH contend that Commerce's differential pricing methodology is not in accordance with the law due to an adverse World Trade Organization ("WTO") Appellate Body Report. *See* Husteel Br. 33–35 (citing Appellate Body Report, *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, WTO Doc. WT/DS464/AB/R (adopted Sept. 26, 2016) ("AB Report")). The WTO Appellate Body concluded that the differential pricing methodology applied by the United States violates Article 2.4.2 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994. *See id.* at 34; AB Report ¶ 1.2. Specifically, the Appellate Body faulted: (1) the method as ineffectual to reveal patterns across purchasers, regions, and time periods; (2) application of the average-to-transaction ("A-to-T") method to all sales instead of only the sales identified as part of an identified pattern; (3) "zeroing" of negative dumping margins even under the A-to-T method; and (4) lack of explanation as to why the average-to-average method or transaction-to-transaction method

would fail to account for differences in the export prices that form an identified pattern. Husteel Br. 34 (citing AB Report ¶¶ 5.34–36, 6.2–3, 5.177, 6.7, 6.9–10, 5.153, 5.171, 5.75–76, 6.6.).

Commerce ordinarily uses an average-to-average comparison ("A-to-A") of "the weighted average of the normal values [of subject merchandise] to the weighted average of export prices (and constructed export prices) for comparable merchandise" when calculating a dumping margin. *See* 19 U.S.C. § 1677f-1(d)(1)(A); 19 C.F.R. § 351.414(c)(1). The statute allows Commerce to compare instead the weighted average of normal values to the export prices of individual transactions for comparable merchandise ("A-to-T") when (1) Commerce observes "a pattern of export prices . . . for comparable merchandise that differ significantly among purchasers, regions, or periods of time" and (2) "[Commerce] explains why such differences cannot be taken into account using [the A-to-A methodology]." 19 U.S.C. § 1677f1(d)(1)(B)(i)–(ii). In contrast to the A-to-A method, which may mask dumped sales at low prices by averaging them with sales at higher prices, the A-to-T method allows Commerce to "identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it." *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337, 1342 (Fed. Cir. 2017) (internal quotation marks and citation omitted). Commerce may apply the A-to-T methodology on the same basis in administrative reviews as in antidumping investigations. *See JBF RAK LLC v. United States*, 790 F.3d 1358, 1364 (Fed. Cir. 2015).

In *Apex Frozen Foods Private Ltd. v. United States* ("*Apex Frozen Foods*"), 862 F.3d 1337, 1342–43 (Fed. Cir. 2017), Commerce applied a two-step differential pricing analysis to determine whether there was a pattern of significant price differences warranting an A-to-T comparison. First, Commerce applied the Cohen's *d* test, which Commerce uses to determine whether application of the A-to-T method may be warranted to a portion or all of a respondent's sales. *Id.* at 1343. For the respondent whose sales passed the Cohen's *d* test with more than 66%, Commerce decided that application of the A-to-T method to all sales would be warranted. *Id.* Second, Commerce applied the "meaningful difference" test, which is a comparison of the weighted-average margin computed using the A-to-A method with the weighted-average margin computed using the A-to-T method. *Id.* at 1344–45, 1343. For the A-to-T method, Commerce applied its practice of "zeroing," by which Commerce gives a value of zero to negative dumping margins (sales at non-dumped prices) and averages only positive dumping margins (sales at dumped prices) to "reveal[ ]

masked dumping." *Id.* at 1342 (quoting *Union Steel v. United States*, 713 F.3d 1101, 1109 (Fed. Cir. 2013) ("When examining individual export transactions, using the [A-to-T] comparison methodology, prices are not averaged and zeroing reveals masked dumping.")). Commerce explained that the A-to-A method could not account for the pattern of price differences because the difference between the two margins was "meaningful." *Id.* at 1343 (citation omitted). The statute is silent on how Commerce should identify a pattern of differing prices and how Commerce should determine that the A-to-A method cannot account for differences, and the U.S. Court of Appeals for the Federal Circuit has upheld Commerce's differential pricing methodology as a "reasonable implementation of the statutory scheme." *Id.* at 1346.

As in *Apex Frozen Foods*, Commerce applied its two-step differential pricing methodology here. Final IDM 22. Commerce applied the Cohen's *d* test, which the U.S. sales for Husteel and Hyundai Steel passed with over 66%. *Id.* Commerce also compared the weighted-average dumping margins calculated by the A-to-A method and the A-to-T method with zeroing, and determined that the 25% difference was "meaningful." *Id.*; *see id.* at 31. Commerce applied the A-to-T method to all of Husteel's and Hyundai Steel's U.S. sales. *Id.* at 23. Commerce used the same differential pricing methodology steps and analysis here as was upheld in *Apex Frozen Foods*. The court concludes that the differential pricing methodology applied by Commerce in this case is in accordance with the law.

The court is not persuaded by Husteel's argument that the court should alter its conclusion due to the adverse WTO Appellate Body Report. "WTO decisions are 'not binding on the United States, much less [ ] court[s].'" *Corus Staal BV v. Dep't of Commerce*, 395 F.3d 1343, 1348 (Fed. Cir. 2005) (quoting *Timken Co. v. United States*, 354 F.3d 1334, 1344 (Fed. Cir. 2004)). The Uruguay Round Agreements Act did not amend or modify any law of the United States, and when the Uruguay Round Agreements Act conflicts with United States law, United States law controls. 19 U.S.C. § 3512(a).

"The conduct of foreign relations is committed by the Constitution to the political departments of the Federal Government." *Corus Staal BV*, 395 F.3d at 1349 (quoting *United States v. Pink*, 315 U.S. 203, 222–23 (1942)). The United States Trade Representative has the authority to adopt a WTO ruling with the consultation of congressional committees and agency notice-and-comment rulemaking. 19 U.S.C. § 3533(g)(1). But unless and until implementation, Commerce cannot amend, rescind, or otherwise modify a policy per a WTO ruling, and courts "will not attempt to perform duties that fall within

the exclusive province of the political branches." *Id.*; *Corus Staal BV*, 395 F.3d at 1349.

The court finds no merit in Husteel's argument. Husteel does not assert that the WTO ruling has been adopted through statutory procedure and relies only on the existence of the WTO Appellate Body ruling and compliance panel order. *See* Husteel Br. 33–35. The WTO ruling has no effect on litigation in United States courts without statutory implementation. *See* 19 U.S.C. § 3512(a)(1). Because the court concludes that Commerce's differential pricing methodology is reasonable under the relevant statutes and has been upheld by this Court and the U.S. Court of Appeals for the Federal Circuit, and the court's conclusion is not altered by the WTO Appellate Body Report, the court sustains Commerce's differential pricing methodology as in accordance with the law.

III. Separate Entity Treatment of Hyundai Steel (Pipe Division)

Hyundai Steel contests Commerce's treatment of Hyundai Steel (Pipe Division) as a separate entity based on a purported error by Commerce. Hyundai Br. 29. Defendant argues that the court should not consider the argument because Hyundai Steel failed to exhaust its administrative remedies. Def. Opp'n 40. Defendant contends that the determination requires an affiliation and collapsing analysis, which has not been conducted by Commerce. *Id.* at 40–41.

Commerce has the duty "to determine dumping margins as accurately as possible." *See NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995) (internal quotation marks and citation omitted). "[A] remand to correct clerical errors is especially appropriate where the CIT is already remanding for other reasons." *Cemex, S.A. v. United States*, 133 F.3d 897, 904 (Fed. Cir. 1998) (explaining *NTN Bearing Corp.*, 74 F.3d at 1208).

The court observes that the record appears to support a determination that Hyundai Steel (Pipe Division) is a component of Hyundai Steel's Ulsan factory, not a separate entity. In its request for administrative review, Wheatland did not include Hyundai Steel, but included Hyundai Steel (Pipe Division) at 12 Hunneung-No, Seocho-Gu, Seoul, South Korea, in its list of requested respondents. Wheatland Req. 3. In its Section A Questionnaire Response, Hyundai Steel listed its "Seoul Head Office" at the same address of 12 Hunneung-No, Seocho-gu, Seoul, West Pavilion of Hyundai-Kia Motors Building. Hyundai's Section A Questionnaire Response, PD 30–42, Ex. A-3 (Mar. 20, 2018). Hyundai Steel's subsequent questionnaire responses show that the "Pipe Division" is a component of Hyundai Steel's Ulsan factory. Hyundai's Section B, C, and D Questionnaire Re-

sponses at D-28, PD 62 (Apr. 16, 2018) ("Hyundai Steel segregates FY 2017 COM into factories and, in the case of the Ulsan factory, into divisions to identify the COM of the Pipe Division.") ("Hyundai Steel shows adjustments to account for non-subject products produced in the Pipe Division at the Ulsan plant."). Moreover, Commerce acknowledged the error implicitly by not citing record documents supporting treatment of Hyundai Steel and Hyundai Steel (Pipe Division) as separate entities.

The court notes that, contrary to Defendant's assertion, an affiliation and collapsing analysis is inapplicable here. The relevant regulation directs Commerce to conduct an affiliation and collapsing analysis to determine whether to treat "two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products . . . and the Secretary concludes that there is a significant potential for the manipulation of price or production." 19 C.F.R. § 351.401(f); *see also Prosperity Tieh Enter. Co. v. United States*, 965 F.3d 1320, 1323 (Fed. Cir. 2020). Here, it is apparent to the court that the facts do not support an affiliation and collapsing inquiry into whether Hyundai Steel and Hyundai Steel (Pipe Division) are separate producers who should be treated as a single entity based on a potential for the manipulation of price or production. To the contrary, the court notes that the record seems to support the opposite conclusion that a single entity, Hyundai Steel, was treated inadvertently and inaccurately as two separate entities, Hyundai Steel and Hyundai Steel (Pipe Division). Because the court remands for other reasons, and in the interest of accuracy, the court remands for Commerce to reconsider in accordance with this opinion whether Hyundai Steel and Hyundai Steel (Pipe Division) should be treated as a single entity.

CONCLUSION

The court concludes that Commerce's cost-based particular market situation determination and subsequent adjustment are not in accordance with the law. The court sustains Commerce's differential pricing methodology as in accordance with the law. The court remands for Commerce's reconsideration of treatment of Hyundai Steel and Hyundai Steel (Pipe Division) as a single entity based on the record.

Accordingly, it is hereby

ORDERED that the *Final Results* are remanded for Commerce to remove its cost-based particular market situation adjustment and recalculate the relevant margins without an adjustment to the cost of production; and it is further

ORDERED that Commerce should reconsider treatment of Hyundai Steel and Hyundai Steel (Pipe Division) as a single entity; and it is further

ORDERED that this action will proceed per the following schedule:

(1) Commerce must file the remand redetermination on or before November 23, 2020;

(2) Commerce must file the administrative record on or before December 11, 2020;

(3) Comments in opposition to the remand redetermination must be filed on or before January 11, 2021;

(4) Comments in support of the remand redetermination must be filed on or before February 11, 2021; and

(5) The Joint Appendix must be filed on or before February 25, 2021.

Dated: October 19, 2020
New York, New York

/s/ Jennifer Choe-Groves
JENNIFER CHOE-GROVES, JUDGE

Slip Op. 20–148

SAHA THAI STEEL PIPE PUBLIC COMPANY LIMITED, Plaintiff, v. UNITED STATES, Defendant, and WHEATLAND TUBE COMPANY, INDEPENDENCE TUBE CORPORATION, and SOUTHLAND TUBE, INCORPORATED, Defendant-Intervenors.

Before: Jennifer Choe-Groves, Judge
Court No. 19–00208

[Remanding the U.S. Department of Commerce's remand redetermination in the 2017–2018 administrative review of the antidumping duty order covering circular welded carbon steel pipes and tubes from Thailand.]

Dated: October 19, 2020

Daniel L. Porter, Curtis, Mallet-Prevost, Colt & Mosle LLP, of Washington, D.C., for Plaintiff Saha Thai Steel Pipe Public Company Limited. *Tung A. Nguyen* and *James P. Durling* also appeared.

Elizabeth A. Speck, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant United States. With her on the brief were *Joseph H. Hunt*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Franklin E. White, Jr.*, Assistant Director. Of counsel on the brief was *Brandon J. Custard*, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce.

Roger B. Schagrin, *Elizabeth J. Drake*, and *Paul W. Jameson*, Schagrin Associates, of Washington, D.C., for Defendant-Intervenor Wheatland Tube Company. *Christopher T. Cloutier*, *Luke A. Meisner*, *Geert M. De Prest*, *Kelsey M. Rule*, *Nicholas J. Birch*, and *William A. Fennell* also appeared.

Alan H. Price, *Robert E. DeFrancesco III*, *Cynthia C. Galvez*, and *Theodore P. Brackemyre*, Wiley Rein, LLP, of Washington, D.C., for Defendant-Intervenors Independence Tube Corporation and Southland Tube, Incorporated. *Adam M. Teslik*, *Christopher B. Weld*, *Derick G. Holt*, *Elizabeth V. Baltzan*, *Elizabeth S. Lee*, *Jeffrey O. Frank*, *Laura El-Sabaawi*, *Maureen E. Thorson*, *Stephanie M. Bell*, *Tessa V. Capeloto*, and *Timothy C. Brightbill* also appeared.

OPINION AND ORDER

Choe-Groves, Judge:

Plaintiff Saha Thai Steel Pipe Public Company Limited ("Saha Thai" or "Plaintiff") challenges the U.S. Department of Commerce's ("Commerce") final results in the March 1, 2017 to February 28, 2018 administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand. Before the court is Plaintiff's motion for judgment on the agency record. For the reasons discussed below, the court remands Commerce's *Final Results* for further consideration.

ISSUES PRESENTED

The court reviews the following issues:

(1) Whether Commerce's particular market situation adjustment to the cost of production when conducting a sales-below-cost test is in accordance with the law; and

(2) Whether Commerce's duty drawback adjustment is in accordance with the law.

BACKGROUND

Commerce entered the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand in 1986. *Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 51 Fed. Reg. 8,341 (Dep't Commerce Mar. 11, 1986). Commerce initiated an administrative review of the antidumping duty order for the period of March 1, 2017 through February 28, 2018. *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 Fed. Reg. 19,215, 19,217 (Dep't Commerce May 2, 2018) (PR 104). Commerce selected Saha Thai, a Thai producer of subject merchandise, as the sole mandatory respondent. Resp't Selection Mem., PR 20 (June 25, 2018).

After Saha Thai submitted questionnaire responses, but before Commerce issued preliminary results, domestic producer Wheatland Tube Company ("Wheatland") "allege[d] that a particular market situation existed in Thailand during the period of review ("POR") such that the costs of production of circular welded pipe . . . are distorted and do not accurately reflect the cost of production in the ordinary course of trade." Wheatland Allegation 1, PR 47–51 (Nov. 1, 2018). Wheatland averred that: (1) the Royal Thai Government subsidized Thai producers of hot-rolled coil, enabling its sale at below-market prices to downstream producers of circular welded carbon steel pipes, and (2) the prices for imports of hot-rolled coil into Thailand were distorted through dumping, subsidization, and global overcapacity. *Id.* at 6–7.

Commerce published the preliminary results of its review on May 17, 2019. *Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 84 Fed. Reg. 22,450 (Dep't Commerce May 17, 2019) (prelim. admin. review) and accompanying Prelim. Decision Mem., PR 81 (May 10, 2019) ("PDM") (collectively, "*Preliminary Results*"). In the *Preliminary Results*, Commerce calculated a weighted-average dumping margin of 5.32% for Saha Thai. 84 Fed. Reg. at 22,451. Commerce determined in the *Preliminary Results* that a particular market situation in Thailand distorted the cost of production of circular pipes and tubes. PDM at 6–7. Commerce determined preliminarily that the record was sufficient to quantify the particular market situation's impact and to administer an alternative calculation meth-

odology to address distortions in Saha Thai's production costs. *Id.* at 7–8. Commerce relied on the subsidy rate determined for hot-rolled steel coil producers in the countervailing duty investigation of hot-rolled steel flat products from Thailand. *Id.* at 6–7; *Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 Fed. Reg. 50,410 (Dep't Commerce Oct. 3, 2001). In order to adjust the alleged distortions in hot-rolled steel coil input prices, Commerce increased the input's price by: (1) the United States subsidization rate applicable to hot-rolled steel producers from Thailand; (2) the safeguard duty rate imposed by the Government of Thailand on hot-rolled steel coil imports; and (3) the applicable antidumping duty rates for hot-rolled steel coil imported from certain countries. *See* PDM at 7–8.

Commerce published the final results of its review on November 20, 2019. *Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 84 Fed. Reg. 64,041 (Dep't Commerce Nov. 20, 2019) (final results of antidumping duty administrative review and final determination of no shipments; 2017–2018); *see also* Issues and Decision Mem. for the Final Results of Antidumping Duty Administrative Review; 2017–2018), PR 121 (Nov. 13, 2019) ("IDM") (collectively, the "*Final Results*"). In the *Final Results*, Commerce calculated a weighted-average dumping margin of 5.15% for Saha Thai. 84 Fed. Reg. at 64,042. Commerce maintained its determination that a particular market situation distorted the cost of hot-rolled steel coil, a key component of the subject merchandise. IDM at 4–13

Saha Thai initiated this action challenging Commerce's *Final Results* on November 27, 2019. Summons, Nov. 27, 2019, ECF No. 1; Compl., Nov. 27, 2019, ECF No. 6. The court entered a statutory injunction on December 4, 2019, granted Wheatland's motion to intervene on December 19, 2019, and granted Independence Tube Corporation and Southland Tube, Incorporated's motion to intervene on December 26, 2019. Order for Statutory Inj. Upon Consent, Dec. 4, 2019, ECF. No. 11; Order, Dec. 19, 2019, ECF No. 17; Order, Dec. 26, 2019, ECF No. 24.

Saha Thai moved for judgment on the agency record. Pl. Saha Thai's Mot. J. Agency R. and Br. in Supp. ("Saha Thai Br."), May 15, 2019, ECF Nos. 32, 33. Defendant United States ("Defendant") and Defendant-Intervenors Wheatland, Independence Tube Corporation, and Southland Tube, Incorporated (collectively, "Defendant-Intervenors") responded. Def.'s Resp. to Pl. Mot. J. Agency R. ("Def. Resp."), June 15, 2020, ECF No. 36; Def.-Intervenors' Resp. Br. ("Def.-Intervenor Br."), June 15, 2020, ECF No. 35. Plaintiff replied. Saha Thai's Reply Br., July 13, 2020, ECF No. 37. Defendant filed the joint appendix on July 27, 2020. J.A., July 27, 2020, ECF Nos. 38, 39.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction under 19 U.S.C. § 1516a(a)(2)(B)(iii) and 28 U.S.C. § 1581(c), which grant the court authority to review actions contesting the final results of an administrative review of an antidumping duty order. The court will uphold Commerce's determinations unless they are unsupported by substantial record evidence, or otherwise not in accordance with the law. 19 U.S.C. § 1516a(b)(1)(B)(i).

DISCUSSION

I. Particular Market Situation

A. Governing Law

Commerce determines antidumping duties by calculating the amount by which the normal value of subject merchandise exceeds the export price or the constructed export price for the merchandise. 19 U.S.C. § 1673. When reviewing antidumping duties in an administrative review, Commerce must determine: (1) the normal value and export price or constructed export price of each entry of the subject merchandise, and (2) the dumping margin for each such entry. *Id.* § 1675(a)(1)(B), (a)(2)(A). The statute dictates the steps by which Commerce may calculate normal value "to achieve a fair comparison" with export price or constructed export price. *Id.* § 1677b(a).

First, the statute specifies the methodology for Commerce to determine which sales should be considered and disregarded in calculating normal value. Normal value is "the price at which the foreign like product is first sold . . . in the exporting country . . . in the ordinary course of trade." *Id.* § 1677b(a)(1)(B)(i). Sales outside the ordinary course of trade are excluded from normal value. "Ordinary course of trade" is defined in Section 1677(15) as excluding: (1) sales made at less than the cost of production, and (2) sales that cannot be compared properly with the export price or constructed export price due to a particular market situation. *Id.* § 1677(15)(A), (C). To determine whether "sales . . . have been made at prices that represent less than the cost of production," the statute directs Commerce to conduct the sales-below-cost test. *Id.* § 1677b(b)(1). The cost of production is defined by statute to include the cost of materials and processing, amounts for selling, general, and administrative expenses, and the cost of all containers and expenses incidental for shipment. *Id.* § 1677b(b)(3). Sales that Commerce determines, by application of the sales-below-cost test, were made at prices below the cost of production

or that Commerce determines were made in a particular market situation, are outside the ordinary course of trade and are disregarded from the calculation of normal value. *See id.* § 1677b(b)(1), (a)(1)(B)(i). "Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade." *See id.* §§ 1677b(a)(1)(B)(i), (b)(1); 1677(15)(A), (C).

Second, when using market prices to determine normal value, Commerce may make certain adjustments to the remaining home market prices. The statute lists authorized adjustments for incidental shipping, delivery expenses, and direct taxes; and for differences between the subject merchandise and foreign like products in quantity, circumstances of sale, or level of trade. *Id.* § 1677b(a)(6), (7).

Third, when using home market sales for normal value, if Commerce cannot determine the normal value of the subject merchandise based on home market sales, then Commerce may use qualifying third-country sales or a constructed value as a basis for normal value. *Id.* § 1677b(a)(4), (a)(1)(B)(ii), (b)(1). Constructed value represents: (1) the cost of materials and fabrication or other processing of any kind used in producing the merchandise; (2) the actual amounts incurred and realized for selling, general, and administrative expenses, and for profits, in connection with the production and sales of a foreign like product, in the ordinary course of trade, for consumption in the foreign country; and (3) the cost of packing the subject merchandise. *Id.* § 1677b(e). When calculating constructed value, if Commerce determines that 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, [then] [Commerce] may use . . . any other calculation methodology." *Id.*

B. Unauthorized Adjustment to the Cost of Production for the Sales-Below-Cost Test

For purposes of determining whether sales were made at less than cost, in this case Commerce made an adjustment to Saha Thai's reported cost of production to account for the particular market situation Commerce determined existed during the period of review in the Thai domestic market prices for the input of hot-rolled coil. IDM at 4. Saha Thai argues that Commerce has no legal authority to make a particular market situation adjustment to Saha Thai's costs of production for sales-below-cost test purposes. Saha Thai Br. at 5–15.

As this Court has held repeatedly, the statute does not authorize a particular market situation adjustment to the cost of production when Commerce applies the sales-below-cost test to determine which home market sales to exclude from the calculation of normal value. *See Saha Thai Steel Pipe Pub. Co. v. United States*, 43 CIT __, __, 422 F. Supp. 3d 1363, 1368–70 (2019); *Husteel Co. v. United States*, 44 CIT __, __, 426 F. Supp. 3d 1376, 1383–89 (2020); *Borus an Mannesmann Boru Sanayi Ve Ticaret A.Ş. v. United States* ("*Borusan*"), 44 CIT __, __, 426 F. Supp. 3d 1395, 1411–12 (2020). Defendant recognizes the existence of this line of cases in which the Court has repeatedly rejected Commerce's attempts to apply the particular market situation cost adjustment for purposes of the sales-below-cost test, yet Defendant characterizes Commerce's unlawful adjustments as a disagreement between the Court and Commerce. Def. Resp. at 23. Defendant argues that these cases, including this court's review of the prior administrative review of the related antidumping duty order, *Saha Thai Steel Pipe Public Co. v. United States*, 43 CIT __, 422 F. Supp. 3d 1363 (2019), "are not final and remain subject to appeal. Thus, they are not binding on the Court (or Commerce) in this case." Def. Resp. at 23.

Here, Commerce applied an adjustment to the cost of production calculation set forth in Section 1677b(b)(3) for purposes of the sales-below-cost test pursuant to Section 1677b(b)(1). *See* IDM at 4–7. Commerce relies mistakenly on Section 504 of the Trade Preferences Extension Act of 2015 ("TPEA"), Pub. L. No. 114–27, 129 Stat. 362, for the authority to adjust the cost of production for the sales-below-cost test. Commerce explains that:

> [T]he term "ordinary course of trade," defined in section 771(15) of the Act, includes "situations in which the administering authority determines that the particular market situation prevents a proper comparison {of normal value} with the export price (EP) or constructed export price (CEP)." Thus, where a [particular market situation] affects the [cost of production] of the foreign like product, such as through distortions to the cost of inputs, it is reasonable to conclude that such a situation may prevent a proper comparison of normal value with the U.S. price, irrespective of whether normal value is based on comparison market prices or constructed value. Saha Thai's claim that an examination of a cost-based [particular market situation] for purposes of the [cost of production] goes beyond the plain language of the Act fails to consider that the provision at issue, section 773(e) of the Act, specifically includes the term "ordinary course of trade." Thus, the definition of that term, again, found

> in section 771(15) of the Act, is integral to that cost-based [particular market situation] provision as well as the sales-based [particular market situation] provision. Accordingly, we disagree with Saha Thai that Commerce cannot analyze a cost-based [particular market situation] claim in determining whether a company's comparison market sale prices were below cost, and, therefore, are outside the "ordinary course of trade."

IDM at 6–7. Commerce exercised "discretion to use 'any other calculation methodology' if costs are distorted by a cost-based [particular market situation], including for the purposes of determining the [cost of production] under section 773(b)(3) of the Act." *Id.* at 7. Commerce made a particular market situation adjustment to costs based on Section 1677b(e). Commerce asserts that the cost-based particular market situation analysis and alternative calculation methodology set forth in Section 1677b(e) are available whether Commerce bases normal value on home market sales or constructed value. Def. Resp. at 20; IDM at 5–7. Defendant also asserts that the sales-below-cost test set forth in Section 1677b(b)(1), by relying on the phrase "ordinary course of trade" defined in Section 1677(15)(C) as excluding sales made in a particular market situation, authorizes Commerce to conduct the particular market situation analysis and adjust costs based on Sections 1677b(b)(1) and 1677(15)(C). *Id.*

Section 504 of the TPEA amended the statutory provisions governing constructed value. The amendment authorized Commerce to use alternative cost methodologies when computing constructed value after making a particular market situation determination. The amended language provides:

> For purposes of paragraph (1) [in reference to calculating constructed value] 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 [Commerce] may use another calculation methodology under this part or any other calculation methodology.

19 U.S.C. § 1677b(e). In other words, the amended statute gives Commerce discretion to adjust the cost of production calculation methodology when determining constructed value if Commerce determines that a particular market situation exists. *See id.* Commerce cannot rely on Section 1677b(e) when, as here, Commerce bases normal value on home market sales. No part of the statute allows Commerce to use any other methodology when market sales are used for normal value. *See Saha Thai Steel Pipe Pub. Co.*, 43 CIT at __, 422 F. Supp. 3d at 1368–70; *Husteel Co.*, 44 CIT at __, 426 F. Supp. 3d at

1383–89; *Borusan*, 44 CIT at __, 426 F. Supp. 3d at 1411–12. The "any other methodology" language is reserved solely for when normal value is determined by constructed value. *Husteel Co.*, 44 CIT at __, 426 F. Supp. 3d at 1388.

As to Sections 1677b(b)(1) and 1677(15)(C), Defendant argues that Section 1677b(b)(1)'s reference to the phrase "ordinary course of trade" authorizes Commerce to conduct a cost-based particular market situation analysis and adjustment in the course of the sales-below-cost test. Def. Resp. at 19. Section 1677b(b)(1) provides:

(b) Sales at less than cost of production.

> (1) Determination; sales disregarded. Whenever the administering authority has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of that product, the administering authority shall determine whether, in fact, such sales were made at less than the cost of production. If the administering authority determines that sales made at less than the cost of production—
>
> (A) have been made within an extended period of time in substantial quantities, and
>
> (B) were not at prices which permit recovery of all costs within a reasonable period of time,
>
> such sales may be disregarded in the determination of normal value. Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the merchandise.

19 U.S.C. § 1677b(b)(1). Section 1677b(b)(1) sets forth the sales-below-cost test based on the calculation specified in Section 1677b(b)(3) to confirm that sales were made at less than the cost of production. Within Section 1677b(b) for "Sales at less than cost of production," the subsection 1677b(b)(1) for "Determination; sales disregarded" authorizes Commerce to disregard those below-cost sales as outside the ordinary course of trade. *Id.* § 1677b(b)(1). The plain language of the reference to "ordinary course of trade" provides that sales on which normal value are based must be in the ordinary course of trade. *Id.* § 1677b(b)(1), (a)(1)(B)(i). Sales made at less than cost, between affiliates, and in a particular market situation are excluded from the definition of "ordinary course of trade" in Section 1677(15). Thus, sales in those three categories are disregarded for purposes of

calculating normal value based on market sales. Nothing in the statute grants Commerce the authority to modify the sales-below-cost test to permit a particular market situation analysis or adjustment, and the specificity of the sales-below-cost test leaves no ambiguity. *See Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.").

In sum, although Section 504 of the TPEA amended Section 1677b(e) for "Constructed Value" to grant Commerce discretion to use an alternative calculation methodology, and Section 1677(15) for "Ordinary course of trade" to grant Commerce an additional ground on which it may disregard sales from the normal value calculation when using home market sales, the Section 504 amendment did not amend Section 1677b(b), which sets out the calculation of the cost of production for the sales-below-cost test to determine whether and which sales should be disregarded as outside the ordinary course of trade when normal value is based on home market sales. "[W]here 'Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" *Thomas v. Nicholson*, 423 F.3d 1279, 1284 (Fed. Cir. 2005) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). Thus, the statute authorizes Commerce to disregard certain sales when basing normal value on home market sales, or to use an alternative calculation methodology upon a cost-based particular market situation determination when basing normal value on constructed value.

Here, however, Commerce applied a cost-based particular market situation adjustment for purposes of the sales-below-cost test of Section 1677b(b)(1), while basing normal value on home market sales. The statute does not authorize Commerce to adjust the cost of production as an alternative calculation methodology when using normal value based on home market sales under Section 1677b(e) as claimed by Commerce. The statute also does not authorize Commerce to adjust the cost of production for purposes of the sales-below-cost test under Sections 1677b(b)(1) and 1677(15)(C) as claimed by Commerce. Section 1677b(e) applies only when Commerce bases normal value on constructed value. Because Commerce based normal value on home market sales here, not constructed value, Section 1677b(e) is inapplicable. Nothing in Sections 1677b(b)(1) and 1677(15)(C) authorizes Commerce to adjust the cost of production for the sales-below-cost test.

Based on the foregoing, the court concludes that Commerce's particular market situation adjustment for purposes of the sales-below-cost test while basing normal value on home market sales is not in accordance with the law. The court does not reach the question of whether Commerce's particular market situation determination is supported by substantial evidence.

II. Duty Drawback Adjustment

Saha Thai argues that Commerce should have made a duty drawback adjustment for "imputed Thai AD and safeguard duties that [Commerce] calculated on Saha Thai's purchased [hot-rolled coil] pursuant to its [particular market situation] adjustment methodology." Saha Thai Br. at 34. Defendant responds that Commerce's adjustment of Saha Thai's acquisition costs was based on a particular market situation that led to distortions in hot-rolled steel coil prices, and that this adjustment was based on amendments to the TPEA, not the duty drawback statute. Def. Resp. at 37. Defendant argues further that Saha Thai did not develop the record to establish that Saha Thai was exempt from paying antidumping and safeguard duties. *Id.* Defendant asserts that for these reasons, Commerce did not include antidumping or safeguard duties when calculating the duty drawback adjustment. *Id.* Defendant-Intervenors aver that "no additional duty drawback adjustment to U.S. price is warranted for the completely unrelated [particular market situation] adjustment Commerce applied." Def.-Intervenor Br. at 19.

The court remands for Commerce to eliminate the particular market situation adjustment because Commerce may not adjust the cost of production when using normal value based on home market sales, and thus the court need not consider whether Commerce should have made a duty drawback adjustment.

CONCLUSION

The court concludes that Commerce's cost-based particular market situation adjustment is not in accordance with the law. The court does not opine on whether Commerce should have made a duty drawback adjustment.

Accordingly, it is hereby

ORDERED that the *Final Results* are remanded for Commerce to remove its cost-based particular market situation adjustment and recalculate the respondents' weighted-average dumping margins without a particular market situation adjustment; and it is further

ORDERED that this action will proceed per the following schedule:

(1) Commerce must file the remand redetermination on or before November 23, 2020;

(2) Commerce must file the administrative record on or before December 11, 2020;

(3) Comments in opposition to the remand redetermination must be filed on or before January 11, 2021;

(4) Comments in support of the remand redetermination must be filed on or before February 11, 2021; and

(5) The Joint Appendix must be filed on or before February 25, 2021.

Dated: October 19, 2020
New York, New York

/s/ Jennifer Choe-Groves
JENNIFER CHOE-GROVES, JUDGE

Slip Op. 20–149

CANADIAN SOLAR INC., et al. Plaintiffs, SUMEC HARDWARE & TOOLS CO., LTD., Consolidated Plaintiff, and CHANGZHOU TRINA SOLAR ENERGY CO., LTD. et al., Consolidated Plaintiffs, v. UNITED STATES, Defendant, SOLARWORLD AMERICAS, INC., Defendant-Intervenors.

Before: Jane A. Restani, Judge
Consol. Court No. 18–00184

[Commerce's Remand Results in the Fourth Administrative Review of the countervailing duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules from the People's Republic of China are sustained]

Dated: October 19, 2020

Jeffrey S. Grimson, *Bryan P. Cenko*, *James C. Beaty*, *Jill A. Cramer*, *Kristin H. Mowry*, and *Sarah M. Wyss*, Mowry & Grimson, PLLC, of Washington D.C. for Plaintiffs, Canadian Solar Inc., Canadian Solar International, Ltd., Canadian Solar Manufacturing (Luoyang) Inc., Canadian Solar Manufacturing (Changshu) Inc., CSI Cells Co., Ltd., CSI Solar Power (China) Inc., CSI Solartronics (Changshu) Co., Ltd., CSI Solar Technologies Inc., CSI Solar Manufacture Inc., CSI New Energy Holding Co., Ltd., CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd., Changshu Tegu New Materials Technology Co., Ltd., Changshu Tlian Co., Ltd., Suzhou Sanysolar Materials Technology Co., Ltd. and Canadian Solar (USA) Inc.

Mark B. Lehnardt and *Lindita V. Ciko Torza*, Baker & Hostetler, LLP, of Washington D.C. for Consolidated Plaintiff Sumec Hardware & Tools Co., Ltd.

Robert A. Gosselink, *Jarrod M. Goldfeder*, and *Jonathan M. Freed*, and *Kenneth N. Hammer*, Trade Pacific, PLLC, of Washington, D.C., for Consolidated Plaintiffs Changzhou Trina Solar Energy Co., Ltd., Trina Solar (Changzhou) Science & Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Yancheng Trina Solar Energy Technology Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., and Changzhou Trina PV Ribbon Materials Co., Ltd.

Jeffrey B. Clark, *Jeanne E. Davidson*, *Tara K. Hogan*, and *Justin R. Miller*, International Trade Field Office, U.S. Department of Justice, of New York, NY for the Defendant. Of counsel on the brief was *Paul K. Keith*, Office of Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C.

Timothy C. Brightbill, *Adam M. Teslik*, *Cynthia C. Galvez*, *Douglas C. Dreier*, *Enbar Toledano*, *John A. Riggins*, *Laura El-Sabaawi*, *Maureen E. Thorson*, *Stephanie M. Bell*, and *Stephen J. Obermeier*, Wiley Rein, LLP, of Washington, D.C., for Defendant-Intervenor SolarWorld Americas, Inc.

OPINION

Restani, Judge:

This action concerns the remand redetermination made by the United States Department of Commerce ("Commerce") in the Fourth Administrative Review of the countervailing duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules from the People's Republic of China ("PRC") covering the period of review from January 1, 2015 to December 31, 2015.

Plaintiffs and Consolidated Plaintiffs Canadian Solar Inc., Canadian Solar International, Ltd., Canadian Solar Manufacturing (Lu-

oyang) Inc., Canadian Solar Manufacturing (Changshu) Inc., CSI Cells Co., Ltd., CSI Solar Power (China) Inc., CSI Solartronics (Changshu) Co., Ltd., CSI Solar Technologies Inc., CSI Solar Manufacture Inc., CSI New Energy Holding Co., Ltd., CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd., Changshu Tegu New Materials Technology Co., Ltd., Changshu Tlian Co., Ltd., Suzhou Sanysolar Materials Technology Co., Ltd., and Canadian Solar (USA) Inc. (collectively, "Canadian Solar") and Sumec Hardware & Tools Co., Ltd. ("Sumec");[1] challenge Commerce's findings that the provision of aluminum extrusions and electricity are countervailable subsidies and Commerce's refusal to accept Canadian Solar's import data in setting the benchmark for polysilicon. *See Comments on Final Remand Redetermination of Canadian Solar* at 3–29 ECF No. 102 (Aug. 11, 2020) ("*Canadian Solar Br.*").

Largely relying on arguments made before the court prior to remand and at the agency level, Defendant-Intervenor SolarWorld Americas, Inc. ("SolarWorld") challenges Commerce's finding that the respondents did not benefit from the Export Buyer's Credit Program and contests Commerce's revised benchmark for aluminum extrusions. *See SolarWorld's Objection to Remand Redetermination* at 1–4, ECF No. 101 (Aug. 11, 2020) ("*SolarWorld Br.*"). Consolidated Plaintiffs Changzhou Trina Solar Energy Co., Ltd., Trina Solar (Changzhou) Science & Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Yancheng Trina Solar Energy Technology Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., and Changzhou Trina PV Ribbon Materials Co., Ltd. (collectively, "Trina") argue that Commerce's determinations that respondents did not benefit from the EBCP and the revision of the benchmark for aluminum frames are supported by substantial evidence. *See Response of Trina to Cmts. On Remand Redetermination*, at 3–5 ECF No. 111 (Sep. 10, 2020) ("*Trina Resp.*").

BACKGROUND

The court presumes familiarity with the facts of this case and recounts them only as necessary. Commerce issued its final results in the Fourth Administrative Review of the countervailing duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules from the PRC on July 23, 2018. *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the*

[1] Sumec submitted comments adopting and incorporating by reference Canadian Solar's comments, but did not submit its own arguments. *See Comments on Final Remand Redetermination of Sumec Hardware & Tools Co., Ltd.*, ECF No. 104 (Aug. 11, 2020).

People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015, 83 Fed. Reg. 34,828 (Dep't Commerce July 23, 2018), as amended by *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2015*, 83 Fed. Reg. 54,566 (Dep't Commerce Oct. 30, 2018) ("*Amended Final Results*"). In *Canadian Solar Inc. v. United States*, the court remanded in part and sustained in part Commerce's determination. Slip Op. 20–23, 2020 WL 898557 (CIT Feb. 25, 2020) ("*Canadian Solar I*"). On remand, Commerce has further addressed: (1) whether respondents benefited from the Export Buyer's Credit Program ("EBCP"), (2) whether the provision of aluminum extrusions is a specific subsidy, (3) which datasets to use in setting a benchmark for aluminum extrusions, (4) whether the provision of electricity is a specific subsidy, (5) whether Commerce should accept Canadian Solar's import pricing data in setting a benchmark for polysilicon, (6) whether Commerce should use data from Xeneta in determining ocean freight expenses, and (7) whether Commerce should revise its electricity pricing calculations in view of a purported translation error. *See Final Results of Redetermination Pursuant to Court Remand* at 6–31, ECF No. 95–1 (June 26, 2020) ("*Remand Results*").

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2)(B)(iii) (2012). The court will sustain Commerce's determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law[.]" 19 U.S.C. § 1516a(b)(1)(B)(i). Further, remand redeterminations are "also reviewed for compliance with the court's remand order." *Xinjiamei Furniture (Zhangzhou) Co., Ltd. v. United States*, 968 F. Supp. 2d 1255 (CIT 2014) (citation and quotation marks omitted).

DISCUSSION

I. Export Buyer's Credit Program

In its original determination, Commerce rejected respondents' certifications of non-use after determining that the claims of non-use were unverifiable in the light of the GOC's failure to provide details on the operation of the EBCP. *See Decision Memorandum for Final Results of Countervailing Duty Administrative Review: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; 2015*, C-570–980, at 7–8 (Dep't Commerce July 12, 2018) ("*I & D Memo*"). Following a request from Commerce, the court remanded for reconsideration the agency's de-

termination that respondents benefitted from the EBCP and instructed Commerce to review recent opinions addressing use of the EBCP. *See Canadian Solar I* at *2 (citing *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 352 F. Supp. 3d 1316 (CIT 2018) ("*Changzhou Trina I*") and *Changzhou Trina Solar Energy Co., Ltd. v. United States*, Slip Op. 19–137, 2019 WL 5856438 (CIT Nov. 8, 2019) ("*Changzhou Trina II*"). On remand, Commerce maintains that without a full understanding of the operation of the EBCP, it is unable to verify respondents' claims of non-use. *Remand Results* at 6–7. Nevertheless, given recent court decisions on the matter, Commerce has found "the program not used in this instance." *Id.* at 8. Canadian Solar argues that Commerce's finding that respondents' non-use certifications were unverifiable is unreasonable, although it supports Commerce's ultimate determination. *Canadian Solar Br*. at 2. SolarWorld incorporates by reference its previous arguments that without the Government of the PRC's ("GOC") cooperation, the claims of non-use are unverifiable. *SolarWorld Br.* at 1–3. Trina responds that Commerce's decision to accept respondents' uncontroverted claims of non-use of the EBCP complies with the court's remand by not unnecessarily punishing cooperating parties for the GOC's noncooperation. *Trina Resp.* at 3–5.

As with recent cases involving the EBCP, Commerce maintains that without full knowledge of the program, nothing respondents could offer would suffice to verify their claims of non-use. *See Changzhou Trina Solar Energy Co., Ltd. v. United States*, at *3–4, Slip Op. 20–108, 2020 WL 4464258 (CIT 2020) ("*Changzhou Trina III*"); *see also Jiangsu Zhongji Lamination Materials Co. v. United States*, at*3 Slip Op. 20–39, 2020 WL 1456531 (CIT 2020) ("*Jiangsu*"). Although the court has suggested potential ways forward, *see Changzhou Trina II*, at *4, Commerce remains steadfast in its determination and instead has reverted to accepting the claims of non-use as it has done in previous administrative reviews. *See Remand Results* at 6–8; *Changzhou Trina III*, at *4.

No party submits any new evidence or argument that would allow the court to sanction Commerce's position that the certifications are, as Commerce claims, unverifiable. The certifications of non-use of the EBCP are uncontroverted and it is not impermissible for Commerce to accept these at this juncture. Accordingly, for the reasons stated in the court's previous opinions on the matter, *see Changzhou Trina III*, at *3–4; *Jiangsu*, at *3, the court holds that accepting respondents' certifications of non-use in this situation is permissible and sustains Commerce's determination.

II. Specificity of Aluminum Extrusions

Commerce originally found that the provision of aluminum extrusions was a *de facto* specific subsidy because the users were limited in number, thus rendering the subsidy countervailable. *I & D Memo* at 30. The government requested remand to reconsider its affirmative aluminum extrusions specificity determination in view of the court's opinions in *Changzhou Trina I* and *Changzhou Trina II*, which addressed nearly the same issue. *See Canadian Solar I*, at *2. The court remanded on this issue and instructed Commerce to consult these prior opinions. *Id.*

On remand, Commerce continues to find that the subsidy is *de facto* specific because it is limited to few users within six broad sectors of the Chinese economy. *See Remand Results* at 9–13. It found use of aluminum extrusions was limited to specific applications such as "frames of doors and windows," "curtain wall," "structural frames," "bridges," "guard bars," "elevator and escalator," "shield, handrail and terrace," "agricultural machinery," "radiator," and "shape-setting equipment and assembly-line equipment." *Id.* at 11. Accordingly, Commerce continued to find that the subsidy was *de facto* specific. *Id.* at 12–13; *see also* 19 U.S.C. § 1677(5A)(D)(iii)(I).

Canadian Solar contends that the record since the previous administrative review has developed such that Commerce's decision is not supported by substantial evidence. *Canadian Solar Br.* at 3–10. It argues that Commerce cannot rely on information from the third administrative Review and that information provided by Canadian Solar and the GOC show that aluminum extrusions are used in numerous industries. *Id.* at 5–9. It further avers that the solar industry is not a predominate user of aluminum extrusions. *Id.* at 6.

The government responds that Commerce considered the new information by the GOC and Canadian Solar and found that it did not alter the agency's decision as the information still showed that aluminum extrusions were used in a narrow range of applications. *See* Gov. Reply at 11–13. The GOC's statements, it argues, are "general conclusions rather than evidence of how aluminum extrusions are used." *Id.* at 12–13. It further notes that Commerce's decision was not based on a finding that the solar industry was a disproportionate user of the subsidy, but based on the subsidy's use in a limited number of applications. *Id.* at 12.

Commerce relies in part on information submitted by the GOC in the third administrative review detailing the major uses of aluminum extrusions. *See Placing Aluminum Consumption Information on the Record,* Rem. P. R. 7 (Dep't Commerce Apr. 16, 2020). The court considered this evidence in a case involving the third administrative

review. *See Changzhou Trina II*, at *6. There, Commerce also determined that there was disproportionate usage in a narrow range of applications and thus found that the provision of aluminum extrusions was a specific subsidy. *Id.* The court held that Commerce's decision was supported by substantial evidence and sustained the specificity determination. *Id.* Canadian Solar argues that information offered by it and the GOC in this fourth administrative review requires a different outcome. *Canadian Solar Br.* at 6–8.

First, Canadian Solar cites more recent submissions from the GOC in the fourth, fifth, and sixth administrative reviews that each state that there are a "vast number of uses for aluminum extrusions" and that they are not disproportionately used by the solar industry. *Id.* at 6. Further, the GOC submission no longer contains the more detailed list of uses of aluminum extrusions that it provided in the previous review. Second, Canadian Solar cites a recent ITC Report on aluminum extrusions from China that it submitted to Commerce, which found that "aluminum extrusions are used in a wide variety of finished good applications" and lists several uses. *See id.* at 7–8; *Canadian Solar's Letter Re: NFI on Aluminum Consumption*, Rem. P.R. 13, at Ex. 4, I-10 (Apr. 29, 2020) ("ITC Report").

It was not unreasonable for Commerce to decide not to revise its determination in view of the GOC's recent, conclusory statements offered without sufficient supporting information. Although the court must consider all record evidence, including evidence that detracts from the agency's ultimate determination, *see Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1351 (Fed. Cir. 2006) conclusory statements without more are not evidence. Commerce considered the additional evidence submitted by Canadian Solar regarding end use applications, and found that although the uses listed in those documents expand upon the previous list of uses cited by Commerce, use was still limited to a narrow range of applications and thus a limited number of actual users. *See Remand Results* at 11–12. Commerce's decision is not unreasonable. For example, although the ITC Report lists some additional "[m]ajor end-use applications," this list overlaps to some extent with Commerce's previous list of applications and, nonetheless, still appears narrow compared to the breadth of manufacturers in China. *See ITC Report*; *see also Remand Results* at 12 (listing the numerous types of manufacturers in China). Although the evidence provided by Canadian Solar lists additional uses for aluminum extrusions not previously noted, this does not render Commerce's decision that aluminum extrusions are predominately uti-

lized by few users unsupported by substantial evidence. *See Changzhou Trina II*, at *6, *5 n.9. Accordingly, Commerce's specificity determination is sustained.

III. Benchmark for Aluminum Extrusions

Commerce previously averaged UN Comtrade and IHS datasets in computing the aluminum extrusions benchmark. *See I & D Memo* at 30–31. Following a requested remand, and in view of the court's decision in *Changzhou Trina I* and *Changzhou Trina II*, Commerce has relied solely on the IHS data in computing the benchmark. *See Remand Results* at 13–14.

SolarWorld argues that Commerce should have continued to average the IHS and Comtrade datasets because the Harmonized Tariff Schedule subheadings relied on by the Comtrade data was sufficiently comparable to solar frames. *See SolarWorld Br*. at 3–4. Canadian Solar and Trina respond that Commerce is correct in relying on the IHS data alone given the lack of evidence demonstrating that the Comtrade data is sufficiently comparable to solar frames. *See Canadian Solar Reply* at 6–8; *Trina Br.* at 5. The government agrees, noting that Commerce was unable to "adequately address factors affecting comparability," thus rendering use of the IHS data alone the proper course of action. *Gov. Br.* at 13–14.

The court has previously faulted Commerce for failing to account for "factors affecting comparability" as required by 19 C.F.R. § 351.511(a)(2)(ii) in choosing datasets to set its aluminum extrusions benchmark. *See Changzhou Trina I*, at 1331–33; *Changzhou Trina II*, at *6–7. Specifically, the court was concerned that the Comtrade data appeared to include data from products unrelated to solar frames, whereas the IHS data was specific to solar frames. *Id.* After considering these previous opinions, Commerce has relied solely on the IHS data in setting the benchmark. *Remand Results* at 13–14. SolarWorld does not present any new evidence or argument to support the inclusion of the Comtrade data. The court holds that reliance on just the IHS data in this instance is supported by substantial evidence given its specificity to the product at issue and sustains Commerce's determination.

IV. Specificity of Electricity

In its original determination, Commerce found that the provision of electricity was a specific subsidy after applying an adverse inference to the facts available ("AFA") on the record. *I & D Memo* at 33–34. As with other issues noted above, the government asked for a remand to reconsider its determination that the provision of electricity is a

specific subsidy in view of *Changzhou Trina I* and *Changzhou Trina II*. *See Canadian Solar I*, at *2.

On remand, Commerce asserts that the provision of electricity is regionally specific under 19 U.S.C. § 1677(5A)(D)(iv). *Remand Results* at 14–19. Commerce found that there is price variation across provinces and that the GOC failed to fully account for apparent price adjustments made by the government. *Id.* at 14–16. Commerce faulted the GOC for not providing the provincial price proposals submitted to the NDRC, a central government agency, or otherwise provide a full explanation to account for the variations. *Id.* Accordingly, Commerce claims it cannot determine whether the prices are set in accordance with market principles. *Id.* Although the GOC claims that, as of April 2015, the NDRC delegated price setting authority to the provinces, Commerce put information on the record that it claims undermines this claim. *Id.* at 16–19. Commerce applied adverse inferences to the facts available and determined that electricity is a regionally specific subsidy given the unaccounted-for price discrepancies among provinces and involvement of the NDRC in adjusting prices. *Id.* at 19.

Canadian Solar argues that Commerce is improperly using AFA in rendering its remand determination. *Canadian Solar Br.* at 11–14. It argues that the record demonstrates that the NDRC is no longer involved in setting the price of electricity and that Commerce misunderstands the NDRC Notices 2909 and 748 it relies on in making its decision. *Id.* at 13–15. Further, Canadian Solar argues that Commerce does not comply with the court's order by failing to show that any particular region is receiving preferential subsidized rates. *Id.* at 15–20. It contends that even if the application of AFA was appropriate, Commerce was required to find that a specific province was receiving the subsidy as Commerce's determination effectively finds all provinces subsidized. *Id.* at 21–25.

The government responds that the GOC's non-cooperation prevented Commerce from making a precise determination regarding provincial price variation. *Gov. Reply* at 20. It further contends that Commerce's determination that the GOC's central government is still involved in price setting is a reasonable reading of the record, especially in view of the NDRC Notices. *Id.* at 21–23.

Commerce's determination prior to April 2015 rests on a nearly identical record to the one at issue in *Changzhou Trina III*. There, the court held that Commerce reasonably determined that the central government (via the NDRC) was subsidizing electricity rates in the

PRC. *See Changzhou Trina III*, at *11–12. After making that determination, Commerce attempted to ascertain the reason for price variation among the provinces, but the GOC refused to provide adequate information to determine the reason for the variations. *Id.* Accordingly, Commerce applied an adverse inference and determined that the provision of electricity was a regional subsidy. *Id.* The court sustained Commerce's decision, holding that the use of an adverse inference under those circumstances and the determination of regional specificity was reasonable. *Id.* at *12. Similarly here, the GOC failed to account for the regional differences such that Commerce is unable to determine whether the price variations were due to impermissible regional subsidization. *See Remand Results* at 15–16. Thus, for the reasons stated in *Changzhou Trina III*, the court finds that prior to April 2015, Commerce's determination of regional specificity is sustained.

The question becomes whether changes in April 2015 render Commerce's finding unreasonable after that date. Canadian Solar points to Notice 748 and argues that it undermines Commerce's determination that the NDRC is involved in setting prices after April 2015. *Canadian Solar Br.* at 14–15. Notice 2909 from 2004 states that the NDRC has the authority to "adopt price intervention measures," to avoid sharp electricity fluctuation. *See Additional Documents Memorandum*, Ex. SQR-1, P.R. 198–199 (Dep't Commerce Jan. 2, 2018) ("Notice 2909"). Canadian Solar maintains that Notice 2909 was superseded by Notice 748 from 2015, which it claims shows that the NDRC is no longer involved in price setting. *Canadian Solar Br.* at 13–15. Commerce concluded that Notice 2909 is still relevant, and regardless, language in Notice 748 indicates that provincial governments still submit their price proposals to the NDRC. *Remand Results* at 17–19. This court has previously sustained Commerce's determination made in view of Notice 748 in *Jiangsu Zhongji Lamination Materials Co., Ltd. v. United States*, 405 F. Supp. 3d 1317, 1138 (CIT 2019). Here too, the court sustains Commerce's determination as Notice 748 supports Commerce's determination that the NDRC is still involved in price setting in some capacity as Article 6 directs provinces to report their plans to the NDRC. *See GOC Initial CVD Questionnaire Resp.*, Ex. II E.22, P.R. 98–101 (Aug. 28, 2017) ("Notice 748"). Although Canadian Solar contends that such submission are "not strictly mandatory," *Canadian Solar Br.* at 15, that does not render Commerce's determination unreasonable. Accordingly, the court sustains Commerce's determination regarding the countervailable subsidization of electricity in the PRC.

V. Polysilicon Benchmark

In the underlying review, Canadian Solar submitted its purchase data of imported polysilicon for Commerce to use in computing a benchmark. *See Canadian Solar I*, at *2. Commerce determined, however, that the GOC's participation in the market would skew import data such that it was unusable as a tier-one metric. *Id.*; *see also* 19 C.F.R. § 351.511(a)(2)(i). The court remanded for Commerce to explain how the GOC's involvement in "the general polysilicon industry led to the price distortion of imported solar-grade polysilicon," or otherwise use Canadian Solar's import data as a tier-one metric. *See Canadian Solar I*, at *3.

On remand, Commerce has "undertak[en] a broader analysis of the solar grade polysilicon market," and determined that, in addition to the GOC's participation in the polysilicon market, other factors have led to a distorted polysilicon market in the PRC. *See Remand Results* at 21–29. Commerce has supplemented the record and now cites the GOC's 12th Five Year Plan for the Solar Photovoltaic Industry and the 2013 annual report of GCL-Poly Energy Holdings Limited, a large Chinese solar-grade polysilicon producer, as evidence that the solar-grade polysilicon market is distorted such that import data is unusable. *Id.* at 21. Commerce additionally explained the relevance of previously submitted record documents. *Id.* at 23–24. Taken together, Commerce finds that the government's minority ownership, 15 percent export duties on polysilicon, government agreements with foreign polysilicon manufacturers, and government support for the domestic solar and polysilicon industries distort the domestic solar-grade polysilicon market. *Id.* at 25–29. Thus, Commerce continues to conclude that the domestic market is distorted and that this distortion extends to imported polysilicon as the prices are depressed due to the less expensive domestic supply. *Id.* at 24–27.

Canadian Solar asserts that Commerce has not demonstrated that the GOC's ownership interest in the polysilicon market is significant enough to distort prices. *Canadian Br.* at 26–27. It further contends that the information relied on by Commerce is outdated and that data it submitted "shows a decrease in the Chinese domestic market price of polysilicon due to the lower priced imports of polysilicon in 2015." *Id.* at 27–28. Although Canadian Solar acknowledges that this record is "nearly identical" to the record in *Changzhou Trina III*, in which the court upheld Commerce's decision to resort to a tier-two price for polysilicon, it contends that the court should conclude that Commerce's decision here was unsupported by substantial evidence. *Id.* at 28–29.

The government responds that Commerce's decision should be sustained based on the newly submitted evidence and more-detailed explanation of its reasoning. *Gov. Br.* at 14–18. It argues that Canadian Solar's argument that the information relied upon is outdated is unavailing because Commerce found that the record did not demonstrate that the relevant conditions had changed. *Id.* at 17. It also contends that Commerce explained that the evidence does not demonstrate that import prices drove down the cost of domestic polysilicon, rather than the opposite. *Id.*

As the court explained in *Changzhou Trina III*, Commerce is not required to show that the GOC owns or has a management interest in a substantial amount of the polysilicon market to properly make a market distortion finding as other types of interference can have similar price distorting effects. *See Changzhou Trina III*, at *8. Commerce has added new information to the record that supports its contention that the GOC is involved in the solar-grade polysilicon industry. *See Reopening the Record and Opportunity to Comment*, Rem. P.R. 1 (Dep't Commerce Apr. 1, 2020). This new information, paired with Commerce's more detailed explanation of previous submissions, support Commerce's determination that various GOC policies together depress the domestic price of solar-grade polysilicon, including imports. *See Changzhou Trina III*, at *8–9 (finding, based on a similar record, that WTO-inconsistent export duties and the GOC's various market interventions distorted polysilicon prices). Canadian Solar's conclusory argument regarding Commerce's use of supposedly outdated information is unavailing. Contrary to Canadian Solar's argument, Commerce's understanding that domestic prices depressed imports rather than the other way around is a reasonable reading of the evidence. *Id.* at *9 (citation omitted) (noting that the court would not substitute its judgment for an agency's reasonable interpretation of the evidence). Commerce's determination that the solar-grade polysilicon market was distorted such that it could not use Canadian Solar's import data as a tier-one metric is supported by substantial evidence and is accordingly sustained.

VI. Xeneta Data

In its preliminary determination Commerce computed the ocean freight benchmark by averaging two datasets from Xeneta and Maersk. *See Canadian Solar I*, at *3. After determining that it was unclear whether the Xeneta data included destination terminal handling charges, Commerce used only the Maersk data in its final determination. *Id.* The court remanded for Commerce to reconsider its decision as it appeared that the Xeneta dataset submitted by Canadian Solar included the terminal handling charges. *Id.* at *3–4.

On remand, Commerce reviewed the evidence and determined that the Canadian Solar data did include the terminal handling charges and reverted to averaging the two in setting the ocean freight benchmark. *See Remand Results* at 29–30. No party challenges Commerce's remand decision to average the two datasets. Commerce has complied with the court's remand instructions, and there being no dispute, the court sustains Commerce's determination on remand.

VII. Translation Error

After Commerce issued its preliminary results, Canadian Solar realized it had inadvertently mistranslated one of the electricity schedules it had submitted and alerted Commerce of its mistake. *See Canadian Solar I*, at *4. Faulting Canadian Solar for failing to submit accurate information, Commerce declined to assess whether the schedules had been mistranslated, despite having evidence on record that Canadian Solar claimed made the error clear. *Id.* The court determined that in this situation, where Commerce was made aware of an error shortly after issuing the preliminary results and the error was purportedly clear from record evidence, Commerce had to consider whether there was an error in the translation. *Id.* at *5.

On remand, Commerce compared the translation of "relevant Chinese characters to the GOC's translation of the same characters in a related document," and determined that Canadian Solar had mistranslated a column heading in one of its worksheets. *See Remand Results* at 30–31. Accordingly, Commerce corrected the translation and revised the calculations. *Id.* at 31. No party opposes Commerce's correction and accordingly the court sustains Commerce's decision to make the alteration.

CONCLUSION

For the above-mentioned reasons, Commerce's Remand Results are **SUSTAINED**.

Dated: October 19, 2020
New York, New York

/s/ Jane A. Restani
JANE A. RESTANI, JUDGE

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