

# U.S. Customs and Border Protection

**CBP Dec. 23-06**

**TUNA TARIFF-RATE QUOTA FOR CALENDAR YEAR 2023  
FOR TUNA CLASSIFIABLE UNDER SUBHEADING  
1604.14.22, HARMONIZED TARIFF SCHEDULE OF THE  
UNITED STATES (HTSUS)**

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

**ACTION:** Announcement of the quota quantity for tuna in airtight containers for Calendar Year 2023.

**SUMMARY:** Each year, the tariff-rate quota for tuna described in subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS), is calculated as a percentage of the tuna in airtight containers entered, or withdrawn from warehouse, for consumption during the preceding calendar year. This document sets forth the tariff-rate quota for Calendar Year 2023.

**DATES:** The 2023 tariff-rate quota is applicable to tuna in airtight containers entered, or withdrawn from warehouse, for consumption during the period January 1, 2023 through December 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Julia Peterson, Chief, Quota and Agricultural Branch, Interagency Collaboration Division, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, Washington, DC 20229-1155, at (202) 384-8905 or by email at [HQQUOTA@cbp.dhs.gov](mailto:HQQUOTA@cbp.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

It has been determined that 13,377,875 kilograms of tuna in airtight containers may be entered, or withdrawn from warehouse, for consumption during Calendar Year 2023, at the rate of 6.0 percent *ad valorem*, under subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS). Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent *ad valorem*, under subheading 1604.14.30, HTSUS.

Dated: June 30, 2023.

ANNMARIE R. HIGHSMITH,  
*Executive Assistant Commissioner,  
Office of Trade.*

[Published in the Federal Register, July 7, 2023 (88 FR 43368)]

## VISITOR REQUEST PROCESSING SYSTEMS (VRPS)

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

**ACTION:** 60-Day notice and request for comments; this is a new collection of information.

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

**DATES:** Comments are encouraged and must be submitted (no later than September 5, 2023) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0NEW in the subject line and the agency name. Please use the following method to submit comments:

*Email.* Submit comments to: *CBP\_PRA@cbp.dhs.gov*.

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

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

and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### **Overview of This Information Collection**

**Title:** Visitor Request Processing Systems.

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

**Form Number:** N/A.

**Current Actions:** New collection of information.

**Type of Review:** New collection of information.

**Affected Public:** Individuals.

**Abstract:** The Secretary of the Department of Homeland Security (DHS) is required to protect property owned, occupied, or secured by the Federal Government. See 40 U.S.C. 1315 and 41 CFR 102-81.25, which require Federal agencies to be responsible for maintaining security at their own or leased facilities. Part of adhering to this responsibility is vetting and accounting for visitors to government facilities. U.S. Customs and Border Protection (CBP) is establishing visitor request processing systems to facilitate the vetting and approval workflows for visitor requests to enter various CBP-controlled locations.

This generic clearance would allow CBP to collect visitor data from and on behalf of individuals requesting access to CBP-controlled facilities. Visitor request processing systems are intended to collect information and maintain records on both domestic and foreign national visitors to CBP facilities to protect agency facilities and personnel, as well as facilitating visitor vetting and documenting vetting results and approvals, according to DHS requirements.

Individuals subject to proposed collection are primarily:

- Members of the public, in many instances, with specific business at the facility (*i.e.*, deliveries, repair/ maintenance, drivers transporting other visitors, etc.)
- Contractor personnel
- Non-DHS/CBP federal, state, local and tribal government employees, or officials

- Foreign nationals, individually or as part of international delegations, requesting access to conduct a range of official business with DHS/CBP counterparts
- DHS/CBP personnel not assigned to the facility

Those individuals approved for access, are further evaluated for the type of access granted, escorted, unescorted, or staff-like access to CBP-controlled facilities. Information collected by CBP and entered into visitor request processing systems can include some data necessary for the adjudication of eligibility for facility access; however, only vetting/adjudication results may be contained in the visitor request processing system.

*Type of Information Collection:* Visitor Request Processing Systems.

**Estimated Number of Respondents:** 1,000,000.

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

**Estimated Number of Total Annual Responses:** 1,000,000.

**Estimated Time per Response:** 10 minutes.

**Estimated Total Annual Burden Hours:** 166,667.

Dated: July 3, 2023.

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

[Published in the Federal Register, July 7, 2023 (88 FR 43368)]

## **COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS**

**(No. 03 2023)**

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

**SUMMARY:** The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in March 2023. A total of 226 recordation applications were approved, consisting of 4 copyrights and 222 trademarks.

Corrections or updates may be sent to: Intellectual Property Enforcement Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229-1177, or via email at [iprrquestions@cbp.dhs.gov](mailto:iprrquestions@cbp.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Zachary Ewing, Paralegal Specialist, Intellectual Property Enforcement Branch, Regulations and Rulings, Office of Trade at (202) 325-0295.

ALAINA VAN HORN

*Chief,*

*Intellectual Property Enforcement Branch  
Regulations and Rulings,  
Office of Trade*

## CBP IPR RECORDATION — March 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
COP 23-00078	3/8/2023	3/8/2043	Kirby's Dream Buffet.	HAL Laboratory, Inc., Transfer: By written agreement. Address: KANDA SQUARE, 2-2-1 Kamamishiki-Cho, Chiyoda-Ku, Tokyo, 101-0054, Japan.	No
COP 23-00079	3/7/2023	3/7/2043	PopPuck Package.	PopSockets LLC. Address: 5757 Central Ave., Boulder, CO, 80301.	No
COP 23-00080	3/30/2023	3/30/2043	NFPA 70 National Electrical Code, 2020 Edition.	National Fire Protection Association. Address: One Batterymarch Park, Quincy, MA, 02169, United States.	No
COP 23-00081	3/30/2023	3/30/2043	NFPA 70 National Electrical Code, 2023 Edition.	National Fire Protection Association. Address: One Batterymarch Park, Quincy, MA, 02169, United States.	No
TMK 02-00781	3/29/2023	1/12/2033	POLO PLAYER DESIGN	PRL USA HOLDINGS, INC.	No
TMK 02-00782	3/28/2023	1/12/2033	POLO RALPH LAUREN (STYLIZED)	PRL USA HOLDINGS, INC.	No
TMK 03-00063	3/15/2023	9/16/2032	BULGARI	BULGARI S.P.A.	No
TMK 03-00064	3/15/2023	9/16/2032	BULGARI	BULGARI S.P.A.	No
TMK 03-00156	3/17/2023	3/17/2033	NORTH ATLANTIC OPERATING COMPANY, INC. & DESIGN	NORTH ATLANTIC OPERATING CO. INC	No
TMK 03-00160	3/20/2023	3/17/2033	H. UPMANN & DESIGN	CUBAN CIGAR BRANDS N.V.	No
TMK 03-00313	3/10/2023	12/14/2032	CONFIGURATION OF AN ALLIGATOR	LACOSTE ALLIGATOR S.A.	No
TMK 03-00360	3/8/2023	2/13/2033	HASEGAWA & DESIGN	HASEGAWA CORPORATION	No
TMK 03-00640	3/8/2023	12/24/2032	SILHOUETTED BATTER LOGO DESIGN	MAJOR LEAGUE BASEBALL PROPERTIES	No
TMK 03-00730	3/29/2023	6/29/2033	A (STYLIZED)	ANGELS BASEBALL L.P	No
TMK 04-00448	3/24/2023	8/22/2033	GUCCI	GUCCI AMERICA, INC.	No
TMK 05-00449	3/8/2023	12/31/2032	AUTHENTIC COLLECTION & DESIGN	MAJOR LEAGUE BASEBALL PROPERTIES	No

## CBP IPR RECORDATION — March 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trm	Owner Name	GM Restricted
TMK 05-00687	3/20/2023	7/1/2033	NEOSPORIN	JOHNSON & JOHNSON	No
TMK 06-00641	3/3/2023	3/8/2033	INDIANENSIS UNIVERSITATIS SIGILLUM MDCCCXX LUX ET VERITAS	The Trustees of Indiana University POLYTIC AND CORPORATE	No
TMK 06-00844	3/8/2023	7/6/2033	Dodge Ram's Head Logo Design	FCA US LLC	No
TMK 07-01262	3/17/2023	3/22/2033	TERRACOTTA	Guerlain S.A.	No
TMK 08-00765	3/21/2023	6/11/2033	DESIGN OF PROD	Miller Manufacturing Company	No
TMK 08-00766	3/21/2023	6/11/2033	Configuration of Red Handle	Miller Manufacturing Company	No
TMK 09-00402	3/7/2023	4/28/2033	L LITTMANN QUALITY and Design	3M Company	No
TMK 09-00403	3/7/2023	5/4/2033	LITTMANN	3M Company	No
TMK 10-00911	3/16/2023	4/21/2033	BUICK	GENERAL MOTORS LLC	No
TMK 11-00825	3/3/2023	1/29/2033	ELEMENT	ROCKET TRADEMARKS PTY LTD	No
TMK 12-00220	3/24/2023	10/9/2032	CERTIFIED USB & DESIGN	Universal Serial Bus Implementers Forum, Inc.	No
TMK 12-00841	3/15/2023	9/16/2032	BVLGARI	Bulgari S.P.A.	No
TMK 13-00167	3/16/2023	4/5/2033	OLDSMOBILE	General Motors LLC	No
TMK 13-00291	3/31/2023	4/1/2033	SRS	Trijicon, Inc.	No
TMK 13-00418	3/3/2023	1/20/2033	DAVID YURMAN	DAVID YURMAN IP LLC	No
TMK 13-00461	3/20/2023	6/2/2033	BANANA BOAT	EDGEWELL PERSONAL CARE BRANDS, LLC	No
TMK 13-00632	3/2/2023	2/13/2033	SUPREME	Chapter 4 Corp. DBA Supreme	No
TMK 13-01027	3/17/2023	3/17/2033	BERKSHIRE (STYLIZED)	Berkshire Corporation	No
TMK 13-01333	3/3/2023	3/4/2033	Red Bird Design	Rovio Entertainment, Ltd.	No
TMK 14-00165	3/14/2023	3/11/2033	SMARTSHELL	SAMSONITE IP HOLDINGS S.A.R.L.	No
TMK 14-00224	3/2/2023	3/24/2033	DESIGN (TROPHY)	Federation Internationale De Football Association (Switzerland Corporation)	No
TMK 14-00354	3/8/2023	5/10/2033	CHRYSLER	FCA US LLC	No



## CBP IPR RECORDATION — March 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trm	Owner Name	G/M Restricted
TMK 14-00423	3/7/2023	12/22/2029	HEMI	Chrysler Group LLC	No
TMK 14-00436	3/28/2023	4/15/2033	47	'47 BRAND, LLC	No
TMK 14-00482	3/28/2023	1/9/2033	47 FORTY SEVEN BRAND & Design	'47 BRAND, LLC	No
TMK 14-00894	3/16/2023	5/4/2033	Corvette C5 Emblem	GENERAL MOTORS LLC	No
TMK 14-00897	3/16/2023	3/24/2033	Corvette C4 Emblem	GENERAL MOTORS LLC	No
TMK 14-01048	3/3/2023	3/4/2033	PG & Ddesign	Bendix Commercial Vehicle Systems LLC LIMITED LIABILITY COMPANY	No
TMK 14-01200	3/7/2023	9/11/2032	RD & DESIGN	ROGER DUBUIS SA socit anonyme (sa)	No
TMK 15-00032	3/10/2023	3/11/2033	AMERICA'S MASTER GUNMAKER	Smith & Wesson Corp.	No
TMK 15-00045	3/10/2023	3/11/2033	TC Design Logo	Smith & Wesson Corp.	No
TMK 15-00065	3/16/2023	4/11/2033	GENERAL MOTORS	GENERAL MOTORS LLC	No
TMK 15-00396	3/2/2023	3/18/2033	SAM	Mid-Continent Instrument Co., Inc.	No
TMK 15-00745	3/20/2023	6/2/2033	DESIGN OF CROWN	Rolex Watch U.S.A., Inc.	No
TMK 15-00752	3/20/2023	4/26/2023	YACHT-MASTER	Rolex Watch U.S.A., Inc.	No
TMK 16-00057	3/24/2023	1/23/2033	NIVEA and Design	Beiersdorf AG	No
TMK 16-00542	3/2/2023	3/4/2033	Configuration of a mount	National Products, Inc.	No
TMK 16-00548	3/2/2023	3/4/2033	AQUA BOX	National Products, Inc.	No
TMK 16-00691	3/6/2023	12/10/2032	O (STYLIZED)	THE OHIO STATE UNIVERSITY	No
TMK 16-00741	3/30/2023	5/26/2033	CFA INSTITUTE and Design	CFA Institute	No
TMK 16-00969	3/24/2023	6/26/2033	V VICTORY MOTORCYCLES USA & DESIGN	Polaris Industries Inc.	No
TMK 16-01081	3/7/2023	3/4/2033	INDIAN AND DESIGN	Indian Motorcycle International, LLC	No
TMK 16-01415	3/7/2023	4/8/2033	GRAND CHEROKEE	FCA US LLC	No
TMK 17-00105	3/22/2023	5/25/2033	ADPER	3M COMPANY	No
TMK 17-00641	3/2/2023	3/11/2033	Dragon Design	Cambria Company LLC	No

**CBP IPR RECORDATION — March 2023**

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trm	Owner Name	G/M Restricted
TMK 17-00643	3/2/2023	2/20/2033	CAMBRIA	Cambria Company LLC	No
TMK 17-00691	3/16/2023	3/31/2033	FREE AXEZ	FREEAXEZ, LLC	No
TMK 18-00059	3/30/2023	4/22/2033	GNU	Mervin Manufacturing, Inc.	No
TMK 18-00099	3/24/2023	4/1/2033	OPTI-CLEAN	Allegheny Bradford Corporation	No
TMK 18-00526	3/14/2023	12/15/2032	NUTRAMIGEN	MEAD JOHNSON & COMPANY, LLC	No
TMK 18-00726	3/7/2023	12/10/2032	AUTO-MAX	Osborne Industries, Inc.	No
TMK 18-01217	3/9/2023	12/17/2032	JOKER & design	REPUBLIC TECHNOLOGIES (NA), LLC	No
TMK 19-00386	3/14/2023	5/5/2033	Configuration of a Brown Faucet Handle	WCM Industries, Inc.	No
TMK 19-00727	3/20/2023	5/23/2033	ROLEX	Rolux Watch U.S.A., Inc.	No
TMK 19-01277	3/27/2023	4/1/2033	HONEYWELL	Honeywell International Inc.	No
TMK 19-01285	12/11/2019	9/2/2025	R RBP & DESIGN	TURBO WHOLESale HOLDINGS, LLC	No
TMK 19-01286	3/17/2023	6/12/2029	LIONHART	TURBO WHOLESale TIRES, LLC	No
TMK 19-01288	3/17/2023	4/21/2024	LIZETTI & DESIGN	TURBO WHOLESale TIRES, LLC	No
TMK 20-00032	3/3/2023	3/4/2033	IAPMO R&T; and Shield Design	International Association of Plumbing and Mechanical Officials	No
TMK 20-00118	1/29/2020	12/2/2028	LEXANI	TURBO WHOLESale HOLDINGS LLC	No
TMK 20-00121	1/1/2020	9/2/2025	ROLLING BIG POWER	TURBO WHOLESale HOLDINGS LLC	No
TMK 20-00138	3/22/2023	3/31/2033	MEDTRONIC & DESIGN	MEDTRONIC INC.	No
TMK 20-00730	3/20/2023	3/11/2033	NXP (STYLIZED)	NXP B.V.	No
TMK 20-00744	3/13/2023	3/10/2033	VETO PRO PAC	VETO PRO PAC, LLC	No
TMK 20-00846	3/20/2023	4/1/2033	ROGAINE (STYLIZED)	JOHNSON & JOHNSON	No
TMK 20-01117	3/2/2023	3/18/2033	BRILLIANCE LED	Brilliance LED, LLC	No
TMK 21-00527	3/13/2023	6/30/2030	RBP	TURBO WHOLESale HOLDINGS LLC	No
TMK 21-00814	3/16/2023	4/8/2033	URBAN REPUBLIC UR	J.C.S. Apparel Group, Inc.	No
TMK 22-00429	3/21/2023	5/5/2033	SQUEALING PIG	Treasury Wine Estates	No

## CBP IPR RECORDATION — March 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Tm	Owner Name	G/M Restricted
TMK 22-00908	3/14/2023	9/4/2033	MISHIMOTO (STYLIZED)	RESOURCE INTL INC.	No
TMK 23-01407	3/2/2023	4/3/2033	SKECHERS SLIP-INS	Skechers U.S.A., Inc. II	No
TMK 23-01408	3/2/2023	11/14/2027	CITRIDROPS	Dennis, Donald Patrick	No
TMK 23-01409	3/2/2023	4/3/2033	SKECHERS HANDS FREE SLIP-INS	Skechers U.S.A., Inc.	No
TMK 23-01410	3/2/2023	1/20/2031	ARCH FIT	Skechers U.S.A., Inc. II	No
TMK 23-01411	3/2/2023	9/14/2032	MESSAGE FIT	Skechers U.S.A., Inc.	No
TMK 23-01412	3/2/2023	9/25/2029	HYPER BURST	Skechers U.S.A., Inc	No
TMK 23-01413	3/2/2023	8/18/2031	MAX CUSHIONING	Skechers U.S.A., Inc. II	No
TMK 23-01414	3/2/2023	5/7/2033	TUDOR RANGER	Tudor Watch U.S.A., LLC	No
TMK 23-01415	3/3/2023	6/22/2026	HID	ASSA ABLOY AB	No
TMK 23-01416	3/3/2023	4/16/2026	LANATURA	New Fragrance Continental, Inc.	No
TMK 23-01417	3/3/2023	8/3/2026	HID & Design	ASSA ABLOY AB	No
TMK 23-01418	3/3/2023	4/30/2026	FARGO	ASSA ABLOY AB CORPORATION	No
TMK 23-01419	3/3/2023	7/6/2024	iCLASS	HID Global Corporation	No
TMK 23-01420	3/3/2023	8/24/2026	SEOS	ASSA ABLOY AB	No
TMK 23-01421	3/3/2023	9/15/2031	SIGNO	ASSA ABLOY AB	No
TMK 23-01422	3/3/2023	3/6/2033	EVERYDAY WEEKEND	Everett Joseph Mussen	No
TMK 23-01423	3/3/2023	5/21/2026	LANATURA (STYLIZED)	New Fragrance Continental, Inc.	No
TMK 23-01424	3/3/2023	11/14/2031	VON ZIPPER	BOARDRIDERS IP HOLDINGS, LLC	No
TMK 23-01425	3/3/2023	11/6/2032	Element Tree Device	BOARDRIDERS IP HOLDINGS, LLC	No
TMK 23-01426	3/3/2023	1/31/2028	S & Design	Skechers U.S.A., Inc.	No
TMK 23-01427	3/3/2023	2/5/2030	S (STYLIZED)	Skechers U.S.A., Inc	No
TMK 23-01428	3/3/2023	5/6/2028	S (STYLIZED)	Skechers U.S.A., Inc.	No
TMK 23-01429	3/6/2023	7/26/2032	MIRACASE	MIRACASE LLC	No
TMK 23-01430	3/3/2023	9/23/2030	TCELL925	Hayward Industries, Inc.	No

## CBP IPR RECORDATION — March 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trm	Owner Name	G/M Restricted
TMK 23-01431	3/3/2023	7/16/2029	GOLDLINE	Hayward Industries, Inc.	No
TMK 23-01432	3/6/2023	8/15/2027	FOZIS	AFRIUM LLC	No
TMK 23-01433	3/6/2023	12/3/2030	MOPAR (STYLIZED)	FCA US LLC	No
TMK 23-01434	3/6/2023	7/13/2020	RUNTS	FERRARA CANDY COMPANY	No
TMK 23-01435	3/6/2023	10/17/2026	S (STYLIZED)	Skechers U.S.A., Inc. II	No
TMK 23-01436	3/6/2023	1/4/2025	S & DESIGN	Skechers U.S.A., Inc. II	No
TMK 23-01437	3/7/2023	3/12/2029	DESIGN OF LEMONHEAD	Ferrara Candy Company	No
TMK 23-01438	3/7/2023	12/15/2034	LEMONHEAD	FERRARA CANDY COMPANY	No
TMK 23-01439	3/7/2023	11/14/2032	XXIO (Stylized)	SUMITOMO RUBBER INDUSTRIES, LTD.	No
TMK 23-01440	3/7/2023	2/4/2034	TLR-1 HL	Streamlight, Inc.	No
TMK 23-01441	3/7/2023	8/14/2028	TLR-8	Streamlight, Inc.	No
TMK 23-01442	3/7/2023	10/25/2031	DESIGN OF JEEP GRILL	FCA US LLC	No
TMK 23-01443	3/7/2023	6/23/2031	SHEPTONE	Watson Joules, Inc.	No
TMK 23-01444	3/7/2023	3/3/2031	MOPAR (STYLIZED)	FCA US LLC	No
TMK 23-01445	3/8/2023	9/9/2030	WHIP-IT	United Brands Products Design, Development and Marketing, Inc.	No
TMK 23-01446	3/8/2023	4/20/2025	WHIP-IT	United Brands Products Design, Development and Marketing, Inc.	No
TMK 23-01447	3/8/2023	9/13/2030	WHIP-IT	UNITED BRANDS PRODUCTS DESIGN DEVELOPMENT AND MARKETING, INC.	No
TMK 23-01448	3/8/2023	5/8/2033	BREEZE PRO	Breeze Smoke LLC	No
TMK 23-01449	3/9/2023	2/21/2033	M & DESIGN	L'Oreal USA Creative, Inc.	No
TMK 23-01450	3/9/2023	2/23/2029	MATRIX	L'OREAL USA CREATIVE, INC.	No
TMK 23-01451	3/17/2023	1/29/2030	VACUACTIVUS & DESIGN	Lakhonoff, Nick	No

## CBP IPR RECORDATION — March 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trm	Owner Name	GM Restricted
TMK 23-01452	3/17/2023	1/15/2030	ACTIVECRYO & DESIGN	Lakhomoff, Nick	No
TMK 23-01453	3/17/2023	2/19/2030	CRYO POLAR BEAR & DESIGN	Lakhomoff, Nick	No
TMK 23-01454	3/17/2023	8/12/2030	INFRASHAPE HORIZONTAL & DESIGN	Lakhomoff, Nick	No
TMK 23-01455	3/17/2023	6/30/2031	CRYO V2 (STYLIZED)	Lakhomoff, Nick	No
TMK 23-01456	3/20/2023	11/2/2032	GOTTA CATCH 'EM ALL!	Nintendo of America Inc.	No
TMK 23-01457	3/20/2023	11/2/2032	SUPER MARIO	Nintendo of America Inc.	No
TMK 23-01458	3/20/2023	11/30/2032	METROID	Nintendo of America Inc.	No
TMK 23-01459	3/20/2023	4/3/2033	FIRE EMBLEM	Nintendo of America Inc.	No
TMK 23-01460	3/20/2023	5/1/2033	DESIGN OF YOSHI	Nintendo of America Inc.	No
TMK 23-01461	3/20/2023	5/19/2029	WESTCOTT	F.J. Westcott Co.	No
TMK 23-01462	3/20/2023	11/2/2032	DESIGN OF POKEMON TAIL	Nintendo of America Inc	No
TMK 23-01463	3/21/2023	3/11/2029	DESIGN IMAGERY ENGRAVING	Dunning, Gretchen	No
TMK 23-01464	3/21/2023	1/8/2033	OBEY & DESIGN	BOLD STRATEGIES, INC.	No
TMK 23-01465	3/21/2023	1/6/2031	LULULEMON & Design	LULULEMON ATHLETICA CANADA INC	No
TMK 23-01466	3/21/2023	1/23/2033	DANSKO	Dansko, LLC	No
TMK 23-01467	3/21/2023	7/29/2024	XP	Dansko, LLC	No
TMK 23-01468	3/22/2023	6/21/2033	CROOKED OUT OF COMPTON 91 110 105 710 & DESIGN	Dowell, Ron, L	No
TMK 23-01469	3/22/2023	11/4/2030	H & DESIGN	Lego Juris A/S DENMARK	No
TMK 23-01470	3/22/2023	11/4/2030	LEGO ARCHITECTURE & DESIGN	Lego Juris A/S DENMARK	No
TMK 23-01471	3/23/2023	9/9/2030	TECHNIC	LEGO Juris A/S Koldingvej DENMARK	No
TMK 23-01472	3/22/2023	8/11/2031	DESIGN OF CARTOON FACE	Lego Juris A/S DENMARK	No
TMK 23-01473	3/23/2023	11/16/2031	INSAN BAMBOO SALT & Design	CHOI, Eun-A, REPUBLIC OF KOREA	No
TMK 23-01474	3/23/2023	11/16/2031	INSAN BAMBOO SALT & Design	CHOI, Eun-A, REPUBLIC OF KOREA	No

## CBP IPR RECORDATION — March 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	G/M Restricted
TMK 23-01475	3/22/2023	11/2/2032	DESIGN OF BOOT	Kobayashi Pharmaceutical Co. JAPAN	No
TMK 23-01476	3/22/2023	11/2/2032	DESIGN OF HAND	Kobayashi Pharmaceutical Co. JAPAN	No
TMK 23-01477	3/23/2023	12/8/2025	DRINK SMART, DRINK SAFE	DRINK SAFE TECHNOLOGIES, INC.	No
TMK 23-01478	3/22/2023	1/23/2031	KIEHL'S	L'OREAL USA CREATIVE, INC.	No
TMK 23-01479	3/22/2023	4/4/2033	RALPH LAUREN	REL USA HOLDINGS, INC.	No
TMK 23-01480	3/22/2023	7/2/2033	RANDOLPH	Randolph Engineering, Inc.	No
TMK 23-01481	3/22/2023	8/11/2031	DESIGN OF DC	Byrd, Nkruma Kenyatta	No
TMK 23-01482	3/22/2023	3/2/2033	RE (STYLIZED)	Randolph Engineering, Inc.	No
TMK 23-01483	3/22/2023	3/14/2035	BRUDER	BRUDER GERMANY	No
TMK 23-01484	3/23/2023	11/3/2031	BOBA BAM	Bek Foods llc	No
TMK 23-01485	3/23/2023	5/25/2024	SUREFIRE & Design	Surefire, LLC	No
TMK 23-01486	3/23/2023	4/22/2029	DOBBLE (STYLIZED)	ASMODEE GROUP FRANCE	No
TMK 23-01487	3/23/2023	12/14/2030	SPOT IT	ASMODEE GROUP CORPORATION, FRANCE	No
TMK 23-01488	3/23/2023	12/6/2025	TICKET TO RIDE	Days of Wonder, Inc.	No
TMK 23-01489	3/23/2023	11/21/2028	7 WONDERS & DESIGN	REFOS PRODUCTION BELGIUM	No
TMK 23-01490	3/23/2023	11/28/2028	CATAN & DESIGN	Catan GERMANY	No
TMK 23-01491	3/23/2023	10/31/2028	CATAN (STYLIZED)	Catan GERMANY	No
TMK 23-01492	3/23/2023	6/5/2033	CATAN & DESIGN	Catan GmbH Schulgasse , GERMANY	No
TMK 23-01493	3/23/2023	5/3/2028	GANT	GANT AB SWEDEN	No
TMK 23-01494	3/23/2023	12/21/2032	GANT	GANT AB SWEDEN	No
TMK 23-01495	3/23/2023	5/10/2028	GANT	GANT AB SWEDEN	No
TMK 23-01496	3/23/2023	4/17/2025	GANT (STYLIZED)	GANT AB	No
TMK 23-01497	3/23/2023	1/9/2033	GANT & DESIGN	GANT AB SWEDEN	No
TMK 23-01498	3/23/2023	9/6/2030	Shield with Stars Design	GANT AB	No

## CBP IPR RECORDATION — March 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Tm	Owner Name	G/M Restricted
TMK 23-01499	3/23/2023	2/10/2031	THE POWER'S IN THE TEETH	TANGLE TEEZER UNITED KINGDOM	No
TMK 23-01500	3/23/2023	12/29/2029	TANGLE TEEZER (STYLIZED)	TANGLE TEEZER LIMITED, COMPANY UNITED KINGDOM	No
TMK 23-01501	3/23/2023	6/9/2031	TRX	FCA US LLC	No
TMK 23-01502	3/24/2023	3/5/2028	Configuration of Fragrance Bottle	PRL USA Holdings, Inc	No
TMK 23-01503	3/24/2023	5/20/2028	TRX	FCA US LLC	No
TMK 23-01504	3/24/2023	10/10/2028	SPOT IT! (STYLIZED)	Asmodee Group Quartier Villaray FRANCE	No
TMK 23-01505	3/24/2023	6/21/2033	B (STYLIZED)	Cincinnati Bengals, Inc	No
TMK 23-01506	3/24/2023	6/15/2026	TANGLE TEEZER	Shaun PULFREY, UNITED KINGDOM	No
TMK 23-01507	3/24/2023	12/4/2032	CATAN	Catan GmbH	No
TMK 23-01508	3/24/2023	3/18/2032	G G GLASHUTTE ORIGINAL (STYLIZED)	Glashutter Uhrenbetrieb GmbH	No
TMK 23-01509	3/24/2023	5/1/2025	DESIGN OF POLO BOTTLE	PRL USA Holdings, Inc.	No
TMK 23-01510	3/27/2023	2/28/2026	ALHAZALEEN IN LEAVES & DESIGN	Akbar Brothers Pvt. Limited	No
TMK 23-01511	3/27/2023	8/6/2024	DO GHAZAL & DESIGN	Akbar Brothers	No
TMK 23-01512	3/27/2023	5/4/2033	BREEZE SMOKE	BREEZE SMOKE LLC	No
TMK 23-01513	3/27/2023	6/14/2023	LESS THAN JAKE	Less Than Jake, Inc.	No
TMK 23-01514	3/28/2023	6/3/2031	UPC	International Association of Plumbing and Mechanical Officials	No
TMK 23-01515	3/28/2023	5/25/2030	SMART BIN	Tech Logic Corporation	No
TMK 23-01516	3/28/2023	7/4/2029	POLO	PRL USA Holdings, Inc.	No
TMK 23-01517	3/28/2023	6/14/2033	Bird Claw Design	Microtech Knives, Inc.	No
TMK 23-01518	3/28/2023	11/1/2029	INSECT-O-CUTOR	HARRIS HOLDINGS, INC	No
TMK 23-01519	3/28/2023	5/15/2030	RALPH LAUREN ROMANCE	PRL USA HOLDINGS, INC.	No
TMK 23-01520	3/28/2023	5/25/2030	SH98 shaving head graphics	Koninklijke Philips N.V.	No

## CBP IPR RECORDATION — March 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	G/M Restricted
TMK 23-01521	3/28/2023	5/25/2030	SH30 shaving head graphics	Koninklijke Philips N.V.	No
TMK 23-01522	3/29/2023	8/15/2027	MURO 128	BAUSCH & LOMB INCORPORATED	No
TMK 23-01523	3/29/2023	4/3/2033	ISARIA 1924	Mich. Weyermann GmbH & Co. GER-MANY	No
TMK 23-01524	3/29/2023	1/11/2025	POLO SPORT	PRL USA HOLDINGS, INC.	No
TMK 23-01525	3/29/2023	4/22/2033	TRAILHAWK	FCA US LLC	No
TMK 23-01526	3/29/2023	11/25/2032	SAFARI	PRL USA HOLDINGS, INC.	No
TMK 23-01527	3/29/2023	8/12/2032	ORGANIC VALLEY	COOPERATIVE REGIONS OF ORGANIC PRODUCER POOLS AKA CROPP COOPERATIVE	No
TMK 23-01528	3/30/2023	10/19/2025	ORGANIC PRAIRIE	OMC LLC	No
TMK 23-01529	3/30/2023	9/27/2028	NATIONAL ELECTRICAL CODE	NATIONAL FIRE PROTECTION ASSOCIATION, INC.	No
TMK 23-01530	3/30/2023	3/11/2028	NFPA 70	National Fire Protection Association, Inc.	No
TMK 23-01531	3/30/2023	6/24/2031	NEC and Design	National Fire Protection Association, Inc.	No
TMK 23-01532	3/30/2023	2/22/2033	DESIGN OF FRAMES FOR GLASSES	PIT VIPER	No
TMK 23-01533	3/30/2023	2/22/2033	DESIGN OF FRAMES FOR GLASSES	Pt Viper,LLC	No
TMK 23-01534	3/30/2023	4/19/2031	XX10 (STYLIZED)	Sumitomo Rubber Industries, JAPAN	No
TMK 23-01535	3/30/2023	2/27/2033	VINCE	VINCE, LLC	No
TMK 23-01536	3/30/2023	3/15/2028	VINCE	Vince, LLC	No
TMK 23-01537	3/30/2023	12/13/2032	VINCE	Vince, LLC	No
TMK 23-01538	3/30/2023	2/15/2033	SNJ	SNJ Creations LLC	No
TMK 23-01539	3/31/2023	9/19/2032	Junos Burst- Star Design	Juniper Networks, Inc.	No
TMK 23-01540	3/31/2023	5/11/2033	100 BOOK CHALLENGE	AMERICAN READING COMPANY CORPORATION	No
TMK 23-01541	3/31/2023	9/17/2028	100 BOOK CHALLENGE & DESIGN	American Reading Company	No



**CBP IPR RECORDATION — March 2023**

<b>Recordation No.</b>	<b>Effective Date</b>	<b>Expiration Date</b>	<b>Name of Cop/Tmk/Tnm</b>	<b>Owner Name</b>	<b>GM Restricted</b>
TMK 23-01542	3/31/2023	4/17/2027	ARC LITERACY LABS	American Reading Company	No
TMK 23-01543	3/31/2023	10/24/2032	POWER WORD CARDS	American Reading Company	No
TMK 23-01544	3/31/2023	10/13/2030	ARC PRESS	American Reading Company	No
TMK 23-01545	3/31/2023	5/20/2028	ARC CORE & DESIGN	American Reading Company	No
TMK 23-01546	3/31/2023	5/20/2028	ARC CORE	American Reading Company	No

**COPYRIGHT, TRADEMARK, AND TRADE NAME  
RECORDATIONS****(No. 04 2023)**

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

**SUMMARY:** The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in April 2023. A total of 155 recordation applications were approved, consisting of 6 copyrights and 149 trademarks.

Corrections or updates may be sent to: Intellectual Property Enforcement Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229-1177, or via email at [iprrquestions@cbp.dhs.gov](mailto:iprrquestions@cbp.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Zachary Ewing, Paralegal Specialist, Intellectual Property Enforcement Branch, Regulations and Rulings, Office of Trade at (202) 325-0295.

ALAINA VAN HORN

*Chief,*

*Intellectual Property Enforcement Branch  
Regulations and Rulings,  
Office of Trade*

## CBP IPR RECORDATION — APRIL 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 23-00082	4/12/2023	4/12/2043	The Super Mario Bros. Movie	Nintendo Studios LLC	No
COP 23-00083	4/10/2023	4/10/2043	OPIA		No
COP 23-00084	4/10/2023	4/10/2043	ENCAUSTIC FLOWER		No
COP 23-00085	4/7/2023	4/7/2043	ALASKAN MARK IV CHAIN SAW MILL INSTRUCTIONS (G778 INSTRUCTIONS)	Granberg Pump and Meter Ltd d.b.a. Granberg International. Address: 1051 Los Medanos, Pittsburg, CA, 94565, United States.	No
COP 23-00086	4/7/2023	4/7/2043	ALASKAN SMALL LOG MILL INSTRUCTIONS (G777 INSTRUCTIONS)	Granberg Pump and Meter Ltd d.b.a. Granberg International. Address: 1051 Los Medanos, Pittsburg, CA, 94565, United States.	No
COP 23-00087	4/10/2023	4/10/2043	KATA		No
TMK 03-00252	4/4/2023	4/4/2033	HUBLOT AND DESIGN	HUBLOT SA	No
TMK 03-00520	4/20/2023	4/26/2033	FJ (STYLIZED)	ACUSHNET COMPANY	No
TMK 03-00636	4/25/2023	6/18/2033	SILHOUETTED BATTER LOGO DESIGN	MAJOR LEAGUE BASEBALL PROPERTIES, INC.	No
TMK 03-00639	4/18/2023	4/28/2033	SILHOUETTED BATTER LOGO DESIGN	MAJOR LEAGUE BASEBALL PROPERTIES	No
TMK 03-00728	4/5/2023	4/7/2033	MARINERS AND DESIGN	THE BASEBALL CLUB OF SEATTLE, LP	No
TMK 04-00251	4/11/2023	4/28/2033	GG & DESIGN	GUCCI AMERICA, INC.	No
TMK 04-00433	4/18/2023	5/27/2033	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 04-00775	4/7/2023	4/9/2033	KINGSFORD & DESIGN	THE KINGSFORD PRODUCTS COMPANY	No
TMK 05-00282	4/12/2023	5/25/2033	HARDWOOD CLASSICS	NBA PROPERTIES, INC.	No
TMK 05-00446	4/18/2023	4/28/2033	SUBWAY SERIES	MAJOR LEAGUE BASEBALL PROPERTIES	No

## CBP IPR RECORDATION — APRIL 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trm	Owner Name	G/M Restricted
TMK 05-00448	4/5/2023	4/14/2033	MLB AUTHENTIC COLLECTION	MAJOR LEAGUE BASEBALL PROPERTIES	No
TMK 05-00635	4/3/2023	7/13/2033	DESIGN OF TIGER	DETROIT TIGERS INC.	No
TMK 05-00819	4/25/2023	3/22/2033	GREEN MONSTER	BOSTON RED SOX BASEBALL CLUB LIMITED PARTNERSHIP	No
TMK 05-00823	4/18/2023	4/26/2023	ASTROS AND DESIGN	HOUSTON ASTROS, LLC.	No
TMK 06-00010	4/18/2023	4/18/2033	NOTRE DAME	UNIVERSITY OF NOTRE DAME DU LAC, THE	No
TMK 06-00051	4/24/2023	11/25/2032	Q & DESIGN	THE CROSBY GROUP INC.	No
TMK 06-00533	4/5/2023	4/11/2033	SOX (STYLIZED)	CHICAGO WHITE SOX, LIMITED	No
TMK 07-00211	4/26/2023	3/17/2033	EUCERIN & DESIGN	Beiersdorf Aktiengesellschaft	No
TMK 09-00735	4/4/2023	4/5/2033	JUDITH LEIBER	JUDITH LIEBER IP LLC	No
TMK 11-00358	4/19/2023	1/15/2033	POM	POMWONDERFUL LLC	No
TMK 12-00695	4/3/2023	1/8/2033	ALTAGRACIA	KERWIN ESTATE LLC	No
TMK 12-01090	4/20/2023	12/17/2032	DUNLOP	DNA (Housemarks) Limited	No
TMK 13-00243	4/18/2023	2/19/2033	THREE STRIPE DESIGN	adidas International Marketing B.V. CORPORATION	No
TMK 13-00268	4/18/2023	2/19/2033	CLIMACOOL	Adidas International B.V. LLC	No
TMK 13-00385	4/6/2023	4/7/2033	DivX	DivX LLC	No
TMK 13-00656	4/5/2023	8/7/2033	NES	Nintendo of America Inc.	No
TMK 15-00499	4/7/2023	1/28/2025	NUFACE TRINITY	Carol Cole Company	No
TMK 15-00796	4/4/2023	4/5/2033	JONES NEW YORK	Jones Investment Co., Inc.	No
TMK 16-00095	4/4/2023	4/7/2033	TED BAKER	No Ordinary Designer Label Limited TA Ted Baker	No
TMK 16-00675	4/6/2023	1/23/2033	Winnipeg Jets "jet" logo	Winnipeg Jets Hockey Club Limited Partnership	No

**CBP IPR RECORDATION — APRIL 2023**

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trm	Owner Name	G/M Restricted
TMK 17-00377	4/19/2023	7/30/2033	CLASH OF CLANS	Supercell Ltd	No
TMK 17-00430	4/21/2023	10/2/2033	PUR	HELEN OF TROY LIMITED	No
TMK 17-00452	4/12/2023	5/19/2033	RED V & DESIGN	VALENTINO S.P.A.	No
TMK 17-00662	4/4/2023	1/6/2033	FL-1A	FORD MOTOR COMPANY	No
TMK 17-00979	4/12/2023	1/16/2033	QUALCOMM SNAPDRAGON LOGO DESIGN	Qualcomm Incorporated	No
TMK 17-01099	4/18/2023	1/22/2033	TIFFANY	TIFFANY (NJ) LLC	No
TMK 18-00913	4/21/2023	1/23/2033	OXO TOT	Helen of Troy	No
TMK 19-00100	4/25/2023	6/19/2033	BLUE JAYS (Stylized)	Rogers Blue Jays Baseball Partnership	No
TMK 19-00101	4/3/2023	6/26/2033	DESIGN OF BLUE JAY HEAD & MAPLE LEAF	Rogers Blue Jays Baseball Partnership	No
TMK 20-00536	4/5/2023	4/8/2033	NATS	Washington Nationals Baseball Club, LLC	No
TMK 20-00589	4/4/2023	4/5/2033	KC CANDY and Design	K.C. CONFECTIONERY, LTD.	No
TMK 20-01128	4/3/2023	7/12/2033	A'S (STYLIZED)	ATHLETICS INVESTMENT GROUP LLC	No
TMK 20-01170	4/25/2023	7/30/2033	TORONTO BLUE JAYS & DESIGN	Rogers Blue Jays Baseball Partnership	No
TMK 20-01182	4/3/2023	7/2/2033	DESIGN OF BLUE JAY	Rogers Blue Jays Baseball Partnership	No
TMK 21-00026	4/25/2023	7/30/2033	TORONTO BLUE JAYS & DESIGN	Rogers Blue Jays Baseball Partnership	No
TMK 21-00032	4/25/2023	6/5/2033	A & DESIGN	ATLANTA NATIONAL LEAGUE BASEBALL CLUB, LLC	No
TMK 21-00998	4/21/2023	4/21/2033	CHEETOS (STYLIZED)	FRITO-LAY NORTH AMERICA, INC.	No
TMK 23-01547	3/31/2023	12/20/2032	Square Spark Logo Design	Intel Corporation	No
TMK 23-01548	4/3/2023	6/2/2031	VCN (STYLIZED)	HANGTEN ASIA CO. CHINA	No
TMK 23-01549	4/3/2023	8/26/2030	INTEL AGILEX	Intel Corporation	No
TMK 23-01550	3/31/2023	7/20/2030	Swirl Design	Intel Corporation	No
TMK 23-01551	3/31/2023	7/24/2031	INTEL	Intel Corporation	No

## CBP IPR RECORDATION — APRIL 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 23-01552	3/31/2023	2/10/2031	I (stylized)	INTEL CORPORATION	No
TMK 23-01553	4/4/2023	3/8/2030	BEPREVE	BAUSCH & LOMB INCORPORATED CORPORATION	No
TMK 23-01554	4/4/2023	10/27/2029	ALREX	BAUSCH & LOMB INCORPORATED	No
TMK 23-01555	4/4/2023	3/27/2033	Configuration of a Micropipette Puller	Sutter Instrument Corp.	No
TMK 23-01556	4/4/2023	2/8/2032	LGDR GIA KNOWLEDGE INTEGRITY EXCELLENCE 1931 & DESIGN	Gemological Institute of America, Inc.	No
TMK 23-01557	4/4/2023	3/22/2031	INFUSE	Bausch & Lomb Incorporated	No
TMK 23-01558	4/4/2023	12/17/2029	URBAN RELEAF & DESIGN	Urban ReLeaf Co	No
TMK 23-01559	4/4/2023	11/28/2028	LUMIFY	Bausch & Lomb Incorporated	No
TMK 23-01560	4/4/2023	3/11/2033	BIOTRUE	Bausch & Lomb Incorporated	No
TMK 23-01561	4/4/2023	3/4/2032	ENVISTA	BAUSCH & LOMB INCORPORATED	No
TMK 23-01562	4/4/2023	6/13/2032	BIOTRUE	BAUSCH & LOMB INCORPORATED	No
TMK 23-01563	4/4/2023	8/26/2029	AKREOS	BAUSCH & LOMB INCORPORATED	No
TMK 23-01564	4/4/2023	5/27/2027	ALAWAY	BAUSCH & LOMB INCORPORATED	No
TMK 23-01565	4/4/2023	6/11/2033	PRESERVISION	BAUSCH & LOMB INCORPORATED	No
TMK 23-01566	4/4/2023	11/18/2028	LOTEMAX	BAUSCH & LOMB INCORPORATED	No
TMK 23-01567	4/4/2023	12/24/2023	PROLENSA	BAUSCH & LOMB PHARMA HOLDINGS CORP.	No
TMK 23-01568	4/4/2023	3/6/2026	PUREVISION	BAUSCH & LOMB INCORPORATED	No
TMK 23-01569	4/4/2023	11/13/2026	OPCON-A	BAUSCH & LOMB INCORPORATED	No
TMK 23-01570	4/4/2023	12/19/2029	OCUVITE	BAUSCH & LOMB INCORPORATED	No
TMK 23-01571	4/4/2023	8/2/2029	RENU	BAUSCH & LOMB INCORPORATED	No
TMK 23-01572	4/4/2023	9/13/2028	RENU	BAUSCH & LOMB INCORPORATED	No
TMK 23-01573	4/4/2023	11/4/2027	RENU	BAUSCH & LOMB INCORPORATED	No

## CBP IPR RECORDATION — APRIL 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Tm	Owner Name	G/M Restricted
TMK 23-01574	4/5/2023	12/7/2031	ZENLENS & DESIGN	BAUSCH + LOMB IRELAND LIMITED	No
TMK 23-01575	4/5/2023	10/24/2028	VYZULITA	Bausch & Lomb Incorporated	No
TMK 23-01576	4/5/2023	12/22/2025	PRESERVISION	Bausch & Lomb Incorporated	No
TMK 23-01577	4/5/2023	5/19/2028	STELLARIS	BAUSCH & LOMB INCORPORATED	No
TMK 23-01578	4/5/2023	12/27/2025	ZYLET	BAUSCH & LOMB INCORPORATED	No
TMK 23-01579	4/5/2023	3/27/2033	AMURADO	S & Y Bros, LLC	No
TMK 23-01580	4/5/2023	7/2/2029	BALLISTICBOARD	ShotStop Ballistics, LLC	No
TMK 23-01581	4/6/2023	6/14/2033	SUPER ACTS	FB International Inc	No
TMK 23-01582	4/6/2023	7/14/2025	RAW	NEENAH, INC.	No
TMK 23-01583	4/6/2023	5/21/2032	BAUSCH + LOMB	Bausch & Lomb Incorporated	No
TMK 23-01584	4/6/2023	2/14/2026	AESTHE	Kelley Holdings Inc.	No
TMK 23-01585	4/6/2023	1/23/2031	TORONTO MAPLE LEAFS & DESIGN	Maple Leaf Sports & Entertainment Ltd.	No
TMK 23-01586	4/6/2023	10/27/2029	HOCKEY PLAYER DESIGN	Ice-Arizona Hockey Co LLC	No
TMK 23-01587	4/6/2023	7/19/2028	BAUSCH & LOMB	BAUSCH & LOMB INCORPORATED	No
TMK 23-01588	4/6/2023	5/23/2028	BAUSCH & LOMB	BAUSCH & LOMB INCORPORATED	No
TMK 23-01589	4/6/2023	11/11/2027	BAUSCH & LOMB	BAUSCH & LOMB INCORPORATED	No
TMK 23-01590	4/7/2023	10/17/2028	PANTHERS & DESIGN	Florida Panthers Hockey Club, Ltd.	No
TMK 23-01591	4/7/2023	5/20/2028	TORONTO MAPLE LEAFS & DESIGN	Maple Leaf Sports & Entertainment Partnership CANADA	No
TMK 23-01592	4/7/2023	8/4/2029	DESIGN OF SENATOR	Capital Sports & Entertainment Inc.	No
TMK 23-01593	4/10/2023	9/15/2033	BREAD BUDDY	BUDDIEZ, INC.	No
TMK 23-01594	4/12/2023	5/1/2030	VALENTINO	VALENTINO S.P.A.	No
TMK 23-01595	4/12/2023	7/11/2033	ANTHONY L MARFIONE SIGNATURE DESIGN	Microtech Knives, Inc.	No
TMK 23-01597	4/12/2023	7/11/2033	GREATLAND LASER	GREATLAND LASER, LLC	No

## CBP IPR RECORDATION — APRIL 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	G/M Restricted
TMK 23-01598	4/13/2023	4/2/2027	XTREME	MD AUDIO ENGINEERING, INC.	No
TMK 23-01599	4/13/2023	7/24/2027	CERAVE	L'Oreal USA Creative, Inc.	No
TMK 23-01600	4/12/2023	12/1/2029	V VALENTINO GARAVANI & DESIGN	VALENTINO S.P.A.	No
TMK 23-01601	4/12/2023	5/16/2030	V & DESIGN	VALENTINO S.P.A.	No
TMK 23-01602	4/12/2023	6/30/2030	RED VALENTINO (STYLIZED)	VALENTINO S.P.A.	No
TMK 23-01603	4/14/2023	7/11/2033	USGINGER & DESIGN	Hwa-lin Cheng	No
TMK 23-01604	4/13/2023	4/25/2032	VTAMA	Dermavant Sciences GmbH SWITZER- LAND	No
TMK 23-01605	4/14/2023	8/31/2032	V & DESIGN	Dermavant Sciences GmbH SWITZER- LAND	No
TMK 23-01606	4/14/2023	11/9/2032	VALENTINO GARAVANI	VALENTINO S.P.A. Via Turati	No
TMK 23-01607	4/14/2023	4/28/2030	GIGO TRANSPORT	GIGO Transport, Inc.	No
TMK 23-01608	4/14/2023	12/13/2032	IUP FACTORY	NINTENDO OF AMERICA INC.	No
TMK 23-01609	4/18/2023	11/30/2032	WIND BACK	Mondy, Kertious	No
TMK 23-01610	4/18/2023	7/11/2033	ROADMAX	Express Imaging Systems, L.L.C.	No
TMK 23-01611	4/18/2023	4/10/2033	NVG NOVAVERA & DESIGN	NOVA VERA GIDA VE TARIM SANAYI TICARET ANONIM SIRKETI, TURKEY	No
TMK 23-01612	4/18/2023	3/18/2029	HOST DEFENSE (STYLIZED)	Stamets, Paul	No
TMK 23-01613	4/18/2023	2/13/2032	HOST DEFENSE	TURTLE BEAR HOLDINGS, LLC	No
TMK 23-01614	4/18/2023	7/13/2032	PLYMOUTH	CHRYSLER CORPORATION	No
TMK 23-01615	4/18/2023	11/20/2029	SCAT PACK	FCA US LLC	No
TMK 23-01616	4/18/2023	10/26/2025	RUMBLE BEE	FCA US LLC	No
TMK 23-01617	4/18/2023	8/11/2024	PATRIOT	DAIMLERCHRYSLER CORPORATION	No
TMK 23-01618	4/18/2023	10/16/2032	OVERLAND	FCA US LLC	No
TMK 23-01619	4/18/2023	4/25/2032	TI-MACHAN'N	Sunshine Spice, Corp	No



## CBP IPR RECORDATION — APRIL 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	G/M Restricted
TMK 23-01620	4/19/2023	9/18/2029	UDDERLY SMOOTH & DESIGN	Redex Industries, Inc.	No
TMK 23-01621	4/19/2023	4/10/2033	NYX PROFESSIONAL MAKEUP	L'OREAL USA Creative, Inc	No
TMK 23-01622	4/19/2023	3/20/2027	NYX PROFESSIONAL MAKEUP	L'OREAL USA CREATIVE, INC.	No
TMK 23-01623	4/19/2023	8/27/2024	VIMIZIM	Biomarin Pharmaceutical, Inc.	No
TMK 23-01624	4/19/2023	1/8/2034	NYX PROFESSIONAL MAKEUP & DESIGN	L'OREAL USA CREATIVE, INC.	No
TMK 23-01625	4/20/2023	10/19/2032	THE GOODEST	The Goodest LLC	No
TMK 23-01626	4/20/2023	6/14/2033	CHINESE CHARACTER DESIGN	Tingyi Holding Corp. CAYMAN ISLANDS	No
TMK 23-01627	4/20/2023	9/28/2032	CHEF DESIGN	Tingyi (Cayman Islands) Holding Corp. CAYMAN ISLANDS	No
TMK 23-01628	4/20/2023	12/27/2032	KANGSHIFU	Tingyi (Cayman Islands) Holding Corp. CAYMAN ISLANDS	No
TMK 23-01629	4/20/2023	8/24/2032	Q & DESIGN	ELECTRONIXIQ, Inc.	No
TMK 23-01630	4/20/2023	5/26/2029	FREEFALL	DQC International Corp.	No
TMK 23-01631	4/20/2023	10/20/2032	SUPER QUIET	SANDHILL WHOLESale OF OHIO, INC.	No
TMK 23-01632	4/20/2023	11/11/2029	TOESOX & DESIGN	THIRTY THREE THREADS, INC.	No
TMK 23-01633	4/20/2023	4/3/2032	STICK TO YOUR PRACTICE	THIRTY THREE THREADS, INC.	No
TMK 23-01634	4/20/2023	11/11/2029	A FOOT REVOLUTION	THIRTY THREE THREADS, INC.	No
TMK 23-01635	4/21/2023	9/1/2030	BESIVANCE	BAUSCH & LOMB INCORPORATED	No
TMK 23-01636	4/21/2023	12/22/2029	GOOD GRIPS	Helen of Troy Limited	No
TMK 23-01637	4/21/2023	8/21/2032	OSPREY & BIRD DESIGN	Osprey Packs, Inc.	No
TMK 23-01638	4/21/2023	8/19/2032	HOT TOOLS	HELEN OF TROY LIMITED	No
TMK 23-01639	4/24/2023	5/21/2033	REAL FRUIT BODY	Minoru, Llc	No
TMK 23-01640	4/24/2023	11/11/2030	THERAGUN MINI	THERABODY, INC.	No
TMK 23-01641	4/24/2023	8/25/2031	THERABODY	THERABODY, INC.	No

## CBP IPR RECORDATION — APRIL 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23-01642	4/24/2023	2/22/2033	SIP N' GO	Perez, Yasmine	No
TMK 23-01643	4/24/2023	11/25/2027	HEARTSTART	PHILIPS ELECTRONICS	No
TMK 23-01644	4/24/2023	8/24/2032	RESPIRONICS	Koninklijke Philips NETHERLANDS	No
TMK 23-01645	4/24/2023	2/9/2032	RG ROSE & GOLD (STYLIZED)	Rose and Gold, LLC	No
TMK 23-01646	4/25/2023	12/7/2030	CHOCOPERFECTION	Kringas, Mary Jo	No
TMK 23-01647	4/25/2023	3/29/2031	PET DREAMS & DESIGN	PET DREAMS INTERNATIONAL, INC.	No
TMK 23-01648	4/25/2023	11/19/2024	PET DREAMS	PET DREAMS INTERNATIONAL, INC.	No
TMK 23-01649	4/26/2023	1/26/2034	VIPER	DAIMLERCHRYSLER CORPORATION	No

# U.S. Court of International Trade

Slip Op. 23–98

KG DONGBU STEEL CO., LTD., DONGBU STEEL CO., LTD., AND DONGBU INCHEON STEEL CO., LTD., Plaintiffs, v. UNITED STATES, Defendant, and NUCOR CORPORATION AND STEEL DYNAMICS, INC., Defendant-Intervenors.

Before: Jennifer Choe-Groves, Judge  
Court No. 22–00047

[Remanding the final determination of the U.S. Department of Commerce in the countervailing duty review of certain corrosion-resistant steel products from the Republic of Korea.]

Dated: July 7, 2023

*Brady W. Mills, Donald B. Cameron, Julie C. Mendoza, R. Will Planert, Mary S. Hodgins, Eugene Degnan, Edward J. Thomas, III, Jordan L. Fleischer, and Nicholas C. Duffey, Morris, Manning & Martin, LLP, of Washington, D.C., for Plaintiffs KG Dongbu Steel Co., Ltd., Dongbu Steel Co., Ltd., and Dongbu Incheon Steel Co., Ltd.*

*Claudia Burke, Assistant Director, Elizabeth Speck, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C. With them on the brief were Brian M. Boynton, Principal Deputy Assistant Attorney General, and Patricia M. McCarthy, Director. Of Counsel on the brief was Ayat Mujais, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.*

*Alan H. Price, Christopher B. Weld, Tessa V. Capeloto, and Adam M. Teslik, Wiley Rein LLP, of Washington, D.C., for Defendant-Intervenor Nucor Corporation.*

*Jeffrey D. Gerrish, Roger B. Schagrin, and Saad Y. Chalchal, Schagrin Associates, of Washington, D.C., for Defendant-Intervenor Steel Dynamics, Inc.*

## **OPINION AND ORDER**

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

Plaintiffs KG Dongbu Steel Co., Ltd., Dongbu Steel Co., Ltd., and Dongbu Incheon Steel Co., Ltd. (collectively, “KG Dongbu” or “Plaintiffs”) challenge the U.S. Department of Commerce’s (“Commerce”) *Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2019. Compl., ECF No. 12; *Certain Corrosion-Resistant Steel Products From the Republic of Korea (“Final Results”)*, 87 Fed. Reg. 2759 (Dep’t of Commerce Jan. 19, 2022) (final results and partial rescission of countervailing duty administrative review; 2019); *see also* Issues and Decision Memorandum for the Final Results and Partial Rescission of the 2019 Administrative

Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from the Republic of Korea (“Final IDM”), PR 213.<sup>1</sup>

KG Dongbu challenges: (1) Commerce’s determination that the first through third debt-to-equity restructurings provided a countervailable subsidy; (2) Commerce’s determination that the benefits from KG Dongbu’s debt-to-equity restructurings that Commerce first found countervailable in *Certain Corrosion-Resistant Steel Products From the Republic of Korea* (“Preliminary Results”), 86 Fed. Reg. 37,740 (Dep’t of Commerce July 16, 2021) (preliminary results of countervailing duty administrative review, 2019) passed through to KG Dongbu despite the change in ownership during the 2019 period of review; (3) Commerce’s calculation of the uncreditworthiness benchmark for purposes of measuring the benefit from KG Dongbu’s restructured long term loans and bonds; and (4) Commerce’s calculation of the unequityworthy discount rate for purposes of measuring the benefits from the equity infusions from government-controlled creditors. Pls.’ Mot. J. Agency R. and Mem. Supp. (“Pls.’ Br.”), ECF Nos. 33, 34; Pls.’ Reply Br. Supp. Mot. J. Agency R. (“Pls.’ Reply Br.”), ECF Nos. 40, 41. Defendant United States (“Defendant”) and Defendant-Intervenor Nucor Corporation (“Nucor”) argue that the Court should sustain the *Final Results*. Def.’s Resp. Br. Pl.’s Mot. J. Agency R. (“Def.’s Resp. Br.”), ECF Nos. 35, 36; Def.-Interv.’s Resp. Mot. J. Agency R. (“Def.-Interv.’s Resp. Br.”), ECF Nos. 37, 38, 39. For the reasons discussed below, the Court remands Commerce’s *Final Results*.

## ISSUES PRESENTED

The Court reviews the following issues:

1. Whether Commerce’s determination that the first through third debt-to-equity restructurings provided a countervailable benefit to KG Dongbu is supported by substantial evidence and in accordance with the law;
2. Whether Commerce’s determination that the benefits from the debt-to-equity restructurings passed through to KG Dongbu despite the change in ownership is supported by substantial evidence;
3. Whether Commerce’s calculations of the uncreditworthy benchmark rate are supported by substantial evidence; and

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<sup>1</sup> Citations to the administrative record reflect the public administrative record (“PR”) document numbers. ECF No. 44.

4. Whether Commerce’s calculations of the unequityworthy discount rate are supported by substantial evidence.

### **PROCEDURAL HISTORY**

Commerce published its countervailing duty order in the Federal Register. *Certain Corrosion-Resistant Steel Products From India, Italy, Republic of Korea and the People’s Republic of China*, 81 Fed. Reg. 48,387 (Dep’t of Commerce July 25, 2016) (countervailing duty order). Commerce initiated an administrative review of the countervailing duty order on certain corrosion-resistant steel products from Korea for the period of January 1, 2019, to December 31, 2019, selecting KG Dongbu and Hyundai Steel Company (“Hyundai Steel”) as mandatory respondents. *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 Fed. Reg. 54,983, 54,990–91 (Dep’t of Commerce Sept. 3, 2020).

Commerce issued the *Preliminary Results* of the administrative review. *Preliminary Results*, 86 Fed. Reg. 37,740; Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review; 2019: Certain Corrosion-Resistant Steel Products from the Republic of Korea,” (June 12, 2021), PR 173. Commerce issued the *Final Results* of the administrative review. *Final Results*, 87 Fed. Reg. 2759; Final IDM.

### **JURISDICTION AND STANDARD OF REVIEW**

The U.S. Court of International Trade has jurisdiction pursuant to 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 a countervailing duty order. The Court shall hold unlawful any determination 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).

### **DISCUSSION**

#### **I. Countervailable Subsidy Overview**

A countervailable subsidy exists when a foreign government provides a financial contribution to a specific industry that confers a benefit upon a recipient within the industry. 19 U.S.C. § 1677(5); see also *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1369 (Fed. Cir. 2014). For equity infusions, a benefit is conferred if “the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion

is made.” 19 U.S.C. § 1677(5)(E)(i); *see also* 19 C.F.R. § 351.507(a)(1) (defining a benefit for equity infusions).

Commerce considers an equity infusion to be inconsistent with usual investment practice if the price paid by the government for newly issued shares is greater than the price paid by private investors for the same (or similar form of) newly issued shares. 19 C.F.R. § 351.507(a)(2)(i). Commerce does not consider private sector investor prices if Commerce concludes that private investor purchases of newly issued shares are not significant. *Id.* § 351.507(a)(2)(iii). When significant private sector participation does not exist, Commerce determines whether the firm funded by the government-provided equity is equityworthy or unequityworthy at the time of the equity infusion. *Id.* § 351.507(a)(3). A determination that the firm is unequityworthy constitutes a determination that the equity infusion is inconsistent with the usual investment practice of private investors, and therefore, that a benefit to the firm exists in the amount of the equity infusion. *Id.*; *see also id.* § 351.507(a)(6).

Commerce considers a firm to be equityworthy if Commerce determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion took place, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. *Id.* § 351.507(a)(4)(i). In making this determination, Commerce considers the following factors: (A) an objective analysis of the future financial prospects of the recipient firm, (B) current and past indicators of the recipient firm’s financial health, (C) rates of return on equity in the three years prior to the government equity infusion, and (D) private investor equity investment into the recipient firm. *Id.* § 351.507(a)(4)(i)(A)–(D). Commerce may focus on the equityworthiness of a specific project, in appropriate circumstances, rather than the company as a whole. *Id.* § 305.507(a)(4)(i).

## **II. First Through Third Debt-to-Equity Restructurings**

### **A. Whether Commerce’s Determination is in Accordance with the Law**

Plaintiffs argue that Commerce’s determination that the first through third debt-to-equity restructurings provided a countervailable subsidy to KG Dongbu is not in accordance with the law because Commerce has an established practice for determining whether debt-to-equity restructurings provide a countervailable subsidy, but Commerce ignored that practice and failed to provide a reasonable explanation for departing from its established practice. Pls.’ Br. at 15–20. Defendant defends Commerce’s determination and argues that “the

majority of Commerce’s argument in [the case cited by Plaintiffs to establish Commerce’s alleged established practice] turned on the fact that the plaintiff . . . failed to exhaust its administrative remedies with respect to whether the private investors’ participation and share were significant.” Def.’s Resp. Br. at 16.

If Commerce has a routine practice for addressing similar situations, it must either apply that practice or provide a reasonable explanation regarding why Commerce has deviated from that practice. *See SKF USA, Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001) (“An agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently.”); *see also M.M. & P. Mar. Advancement, Training, Educ. & Safety Program v. Dep’t of Commerce*, 729 F.2d 748, 755 (Fed. Cir. 1984) (“An agency is obligated to follow precedent, and if it chooses to change, it must explain why.”); *see also Cinsa, S.A. de C.V. v. United States*, 21 CIT 341, 349, 966 F. Supp. 1230, 1238 (1997) (“Commerce can reach different determinations in separate administrative reviews but it must employ the same methodology or give reasons for changing its practice.”).

First, the Court finds that Commerce has a standard practice regarding not reexamining the countervailability of Dongbu Steel’s equity infusions. There were three separate debt-to-equity restructurings prior to the contested review, in February 2015, May 2016, and April 2018. *See Certain Corrosion-Resistant Steel Products from the Republic of Korea*, Case No. C-580–879: Dongbu’s Initial Questionnaire Response (Dec. 3, 2020) (“KG Dongbu’s IQR”) at 40–46, PR 74–78. Commerce determined previously that no countervailable subsidy existed in each of the three previous debt-to-equity restructurings. Final IDM at 46–47. In *Certain Corrosion-Resistant Steel Products From the Republic of Korea* (“CORE 2018 Final Results”), 86 Fed. Reg. 29,237 (Dep’t of Commerce June 1, 2021) (final results and partial rescission of countervailing duty administrative review; 2018) and accompanying Issues and Decision Memorandum, Commerce determined that the same debt-to-equity restructurings currently under review provided no countervailable benefit. *Id.* at 29,238. As KG Dongbu highlights, “the facts on the record regarding the first three [debt-to-equity restructurings] were also on the record in the [CORE 2018 Final Results], except for documents related to the third [debt-to-equity restructuring] that occurred in 2018, were also on the record of the CORE 2015–2016 and 2017 Reviews.” Pls.’ Br. at 16.

The Court notes that Commerce reviewed the same debt-to-equity restructurings as in previous reviews, though resulting in a different

outcome here. *Compare Certain Corrosion-Resistant Steel Products From the Republic of Korea*, 84 Fed. Reg. 11,749, 11,750 (Dep't of Commerce Mar. 28, 2019) (final results and partial rescission of countervailing duty administrative review; 2015–2016) and accompanying Issues and Decision Memorandum, and *Certain Corrosion-Resistant Steel Products From the Republic of Korea*, 85 Fed. Reg. 15,112, 15,113 (Dep't of Commerce Mar. 17, 2020) (final results of countervailing duty administrative review; 2017) and accompanying Issues and Decision Memorandum, *with Final Results*, 87 Fed. Reg. at 2760, and Final IDM at 54. Significantly, the Court observes that Commerce's standard countervailing duty questionnaire language explicitly states that "[a]bsent new information warranting a program reexamination, [Commerce] will not reevaluate prior determinations regarding the countervailability of programs." Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Countervailing Duty Questionnaire (Oct. 6, 2020) at II-1, PR 22–23 (emphasis added). Based on these facts and the prior three debt-to-equity restructurings in February 2015, May 2016, and April 2018, the Court concludes that Commerce has a standard practice of not reexamining the countervailability of Plaintiffs' equity infusions absent new information.

Second, in order to depart from Commerce's routine practice, Commerce must provide a reasonable explanation. *SKF USA, Inc.*, 263 F.3d at 1382. The Court observes that Commerce has neither provided a sufficient explanation nor cited new information on the record that relates to whether the first three debt-to-equity restructurings provided a countervailable benefit. Instead, as justification for Commerce's decision to evaluate the first three debt-to-equity restructurings anew, Commerce cited evidence based on the fourth debt-to-equity restructuring, treating each debt-to-equity restructuring as part of one ongoing transaction rather than four separate, independent transactions. In the Final IDM, addressing KG Dongbu's argument that Commerce departed from its established practice by reexamining its prior determinations with respect to the first three debt-to-equity restructurings, Commerce reasoned that "Commerce's benefit determinations in each segment of a proceeding stand on their own and are made on a fact-specific basis." Final IDM at 46 (citing *Hyundai Steel Co. v. United States*, 42 CIT \_\_, \_\_, 319 F. Supp. 3d 1327, 1342 n.13 (2018)). Commerce explained that it reexamines findings of financial contribution and specificity made in a prior segment of the same proceeding when new evidence necessitates reexamination. *Id.* at 46. As justification for Commerce's decision to reevaluate its prior determinations, Commerce noted that:



While the record evidence shows that private creditors accounted for the same debt-to-equity conversion amounts as in the prior reviews, we cannot rely on this fact alone to assess whether KG Dongbu was equityworthy between 2014 and 2018. This is because in the instant review, unlike in the prior reviews, there were private investors independent from the creditors' committee involved in the fourth equity infusion during the 2019 [period of review]. This inclusion of private investors was a factual change from prior reviews that led us to reconsider the role [Korean Development Bank] played in its control of the creditors' committee.

*Id.* at 47. KG Dongbu argues, however, that the record evidence is not new, and is the same evidence considered by Commerce in the first three debt-to-equity restructuring determinations. Pls.' Br. at 15–20. The Court notes that the record evidence cited by Commerce as justification for its deviation from its past practice does not deal directly with the first through third debt-to-equity restructurings and is not a sufficient explanation to justify departing from its standard practice. *See* Final IDM at 47 (citing KG Dongbu's IQR at 44); *see also* KG Dongbu's IQR at 44 (discussing new private investors involved in the fourth debt-to-equity restructuring as a factual distinction from the first three debt-to-equity restructurings). Instead, Defendant justifies Commerce's determination by arguing that Plaintiff seeks to "decontextualize the various rounds of the restructuring program[.]" Def.-Interv.'s Resp. Br. at 16, not by citing new evidence about the first through third debt-to-equity restructurings that came to light after Commerce had made prior determinations regarding the first through third debt-to-equity restructurings.

Because Commerce failed to provide an adequate explanation for its decision to deviate from its prior determinations, the Court concludes that Commerce's determination is arbitrary and not in accordance with the law. The Court remands Commerce's determination that the first through third debt-to-equity restructurings provided a countervailable subsidy to KG Dongbu for reconsideration or further explanation.

### **B. Whether Commerce's Determination is Supported by Substantial Evidence**

Plaintiffs argue that Commerce's determination to treat the first through third debt-to-equity restructurings as countervailable subsidies to KG Dongbu is not supported by substantial evidence. Pls.' Br. at 23–29. Because the Court is remanding Commerce's determination

as not in accordance with the law, the Court also remands the issue for consideration of whether Commerce's determination is supported by substantial evidence.

### **III. Whether Commerce's Determination Regarding Debt-to-Equity Restructuring Benefits Pass Through is Supported by Substantial Evidence**

Plaintiffs argue that Dongbu properly declined to submit a response to Commerce's Change-in-Ownership Appendix with its initial questionnaire response because Commerce had not found that any non-recurring subsidies provided benefits to Dongbu at that time. *Id.* at 29. Plaintiffs contend that "record evidence demonstrates that Dongbu's change in ownership occurred at arm's length and for fair market value such that any alleged subsidies from the first through third [debt-to-equity restructurings] were extinguished[.]" therefore, "even if the Court finds that Commerce's disregard of its prior practice is lawful, the record shows that any benefits associated with the [debt-to-equity restructurings] did not pass through to KG Dongbu Steel[.]" but were instead "extinguished by the arm's-length purchase of Dongbu by the KG Consortium." *Id.* Defendant asserts that Commerce presumes that a non-recurring subsidy benefits a recipient "over the average useful life of the relevant assets[.]" Def.'s Resp. Br. at 19. Defendant argues that a respondent may rebut this presumption by proving that a change in ownership occurred in which the previous owner sold all or substantially all of a company or its assets in an arm's length sale for fair market value. *Id.* at 19–20.

As noted above, the Court is remanding Commerce's determination as not in accordance with the law based on Commerce's arbitrary departure from prior practice without sufficient explanation. On remand, Commerce may reconsider the record with respect to whether KG Dongbu received any countervailable subsidies; therefore, the Court also remands this issue for Commerce to reconsider whether substantial evidence supports a determination that any change in ownership occurred at arm's length and for fair market value that extinguished any alleged subsidies from the first through third debt-to-equity restructurings to KG Dongbu.

### **IV. Whether Commerce's Uncreditworthy Benchmark Rate Determination is Supported by Substantial Evidence**

Plaintiffs contend that Commerce incorrectly applied the formula for calculating the uncreditworthy benchmark rate. Pls.' Br. at 36. Plaintiffs assert that KG Dongbu's outstanding long-term loans and bonds were restructured during the period of review, thus creating

“new” loans and bonds with a term of six years. *Id.* Plaintiffs argue, however, that Commerce’s calculation of the benefit from the “new” loans that were restructured during the period of review used an incorrect three-year interest rate to measure the countervailable loans and bonds. *Id.* at 36–37.

Defendant asserts that Commerce correctly applied its regulations regarding the uncreditworthy discount rate and calculated the rate based upon evidence on the record. Def.’s Resp. Br. at 23. Defendant argues that Commerce used a correct three-year interest rate as the long-term interest rate paid because no other interest rates were available. *Id.* at 24; *see* Final IDM at 58. Commerce determined that it could not use the six-year interest rate paid by a credit-worthy company because there was no information on the record regarding any six-year interest rate paid by a credit-worthy company. Final IDM at 58. Plaintiffs contend that Commerce had all the information necessary to calculate the benchmark rate and that the term of the loan was six years, not three. Oral Arg. at 4:20–5:20, June 2, 2023, ECF No. 50 (citing KG Dongbu’s IQR at 45).

In the case of a loan, a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would have paid on a comparable commercial loan that the firm could obtain on the market. 19 C.F.R. § 351.505(a)(1). Under normal circumstances, Commerce will rely on effective interest rates. *Id.* However, when a firm is deemed uncreditworthy, Commerce calculates the interest rate pursuant to a specific formula:

$$i_b = [(1 - q_n)(1 + i_f)^n / (1 - p_n)]^{1/n} - 1$$

where:

$n$  = the term of the loan;

$i_b$  = the benchmark interest rate for uncreditworthy companies;

$i_f$  = the long-term interest rate that would be paid by a credit-worthy company;

$p_n$  = the probability of default by an uncreditworthy company within  $n$  years; and

$q_n$  = the probability of default by a creditworthy company within  $n$  years.

*Id.* The benefit conferred by an equity infusion shall be allocated over the same period as a non-recurring subsidy. *Id.* § 351.507(c). Commerce determined that KG Dongbu was uncreditworthy and thus

used the uncreditworthy benchmark formula in 19 C.F.R. § 351.505(a)(3)(iii). Final IDM at 58.

Despite Commerce's assertion that there was no information on the record regarding any six-year interest rate, *id.* at 58, Plaintiffs cite potentially contrary record evidence indicating that the "[r]epayment date of outstanding loans was extended from December 31, 2020 to December 31, 2025[.]" Oral Arg. at 4:20– 5:20, June 2, 2023, ECF No. 50 (citing KG Dongbu's IQR at 45). Thus, the Court observes that the record evidence seemingly indicates that the loan term might be closer to six years and not three years, and Commerce should at least consider the record evidence and further substantiate the loan term used in its redetermination. The Court concludes that Commerce's application of the relevant formula and subsequent determination was not supported by substantial evidence because Commerce should consider the potentially contrary evidence presented by Plaintiffs. The Court remands this issue for Commerce to reconsider the calculation of KG Dongbu's interest rate.

#### **V. Whether Commerce's Unequityworthy Discount Rate Determination is Supported by Substantial Evidence**

Plaintiffs argue that Commerce incorrectly calculated the discount rates in determining the amount of the benefit in each year of the fifteen-year allocation periods for the average useful life of the relevant assets. Pl.'s Br. at 40–41. Defendant contends that Commerce could not use a six-year creditworthy interest rate because there was no information regarding a six-year interest rate paid by a creditworthy company on the record. Def.'s Br. at 24.

As noted above, the Court is remanding for Commerce to reconsider whether the record evidence establishes a loan term of six years or three years. The Court also remands Commerce's calculation of discount rates in determining the amount of the benefit in each year of the fifteen-year allocation periods for the average useful life of the relevant assets based on Commerce's reconsideration of the record evidence.

### **CONCLUSION**

For the foregoing reasons, it is hereby

**ORDERED** that the *Final Results*, 87 Fed. Reg. 2759, are remanded to Commerce for reconsideration consistent with this opinion; and it is further

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

- (1) Commerce shall file the remand determination on or before October 5, 2023;

- (2) Commerce shall file the administrative record on or before October 18, 2023;
- (3) Comments in opposition to the remand determination shall be filed on or before November 20, 2023;
- (4) Comments in support of the remand determination shall be filed on or before December 20, 2023; and
- (5) The joint appendix shall be filed on or before January 19, 2024.

Dated: July 7, 2023  
New York, New York

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

## Slip Op. 23–99

THE MOSAIC COMPANY, Plaintiff, PHOSAGRO PJSC, JSC APATIT, Consolidated Plaintiff, INDUSTRIAL GROUP PHOSPHORITE, LLC, Consolidated Plaintiff and Consolidated Plaintiff-Intervenor, v. UNITED STATES, Defendant, THE MOSAIC COMPANY, Consolidated Defendant, PHOSAGRO PJSC, JSC APATIT, INDUSTRIAL GROUP PHOSPHORITE, LLC, Defendant-Intervenor

Before: Jane A. Restani, Judge  
Consol. Court No. 21–00117

[Commerce’s Remand Results in the countervailing duty investigation of phosphate fertilizers from the Russian Federation is partially sustained and partially remanded for reconsideration consistent with this opinion.]

Dated: July 11, 2023

*Patrick James McLain*, Wilmer, Cutler, Pickering, Hale and Dorr LLP, of Washington, DC, argued for Plaintiff The Mosaic Company. With him on the brief were *David J. Ross*, *Stephanie Ellen Hartmann*, and *Natan Pinchas Lyons Tubman*.

*Ebonie I. Branch*, Commercial Litigation Branch, U.S. Department of Justice, of Washington, DC, argued for the Defendant. With her on the brief were *Brian M. Boynton*, *Patricia M. McCarthy*, and *L. Misha Preheim*. Of counsel on the brief was *Jared Michael Cynamon*, Office of Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, DC.

*Jonathan T. Stoel* and *Cayla D. Ebert*, Hogan Lovells US LLP, of Washington, DC, argued for Defendant-Intervenors PhosAgro PJSC and JSC Apatit. With them on the brief were *H. Deen Kaplan*, *Jared Wessel*, and *Maria A. Arboleda*.

*Jeremy W. Dutra*, Squire Patton Boggs (US) LLP, of Washington, DC, argued for Defendant-Intervenor Industrial Group Phosphorite, LLC. With him on the brief was *Peter Koenig*.

**OPINION AND ORDER****Restani, Judge:**

Before the court are the remand results of the United States Department of Commerce (“Commerce”) pursuant to the court’s order in *Mosaic Co. v. United States*, 46 CIT \_\_, 589 F. Supp. 3d 1298 (2022), in the countervailing duty (“CVD”) investigation of phosphate fertilizers from the Russian Federation (“Russia”) covering the period from January 1, 2019, through December 31, 2019. *See* Redetermination Pursuant to Court Remand Order, ECF Nos. 96–97 (“Remand Results”). Plaintiff The Mosaic Company (“Mosaic”) and Consolidated Plaintiff PhosAgro PJSC and JSC Apatit, cross-owned, (collectively,

“PhosAgro”<sup>1</sup> challenge the Remand Results as unsupported by substantial evidence or otherwise not in accordance with law. The United States (“Government”) asks that the court sustain Commerce’s Remand Results.

## BACKGROUND

While the court presumes familiarity with the facts as set out in *Mosaic*, the court briefly summarizes the relevant record evidence for ease of reference. After Mosaic filed a CVD petition on June 26, 2020, concerning imports of phosphate fertilizers from Russia, Commerce initiated the investigation on July 23, 2020. *Petitions for the Imposition of Countervailing Duties: Phosphate Fertilizers from Morocco and Russia*, P.R. 1–8, C.R. 1–8 (June 26, 2020); *Phosphate Fertilizers From the Kingdom of Morocco and the Russian Federation: Initiation of Countervailing Duty Investigations*, 85 Fed. Reg. 44,505 (Dep’t Commerce July 23, 2020). On August 4, 2020, the U.S. International Trade Administration selected LLC Industrial Group Phosphorite (“EuroChem”)<sup>2</sup> and PhosAgro (collectively, “Mandatory Respondents”) as mandatory respondents in this investigation. *See Countervailing Duty Investigation of Phosphate Fertilizers from Russia: Respondent Selection*, P.R. 55, C.R. 23 (Aug. 4, 2020).

Commerce published its preliminary results on November 30, 2020, *see Phosphate Fertilizers From the Russian Federation: Preliminary Affirmative Countervailing Duty Determination*, 85 Fed. Reg. 76,524 (Dep’t Commerce Nov. 30, 2020), along with the accompanying *Decision Memorandum for the Affirmative Preliminary Determination of the Countervailing Duty Investigation of Phosphate Fertilizers from the Russian Federation*, C-821825, POR 1/1/2019–12/31/2019 (Dep’t Commerce Nov. 23, 2020).

Commerce published its final determination on April 7, 2021. *See Phosphate Fertilizers From the Kingdom of Morocco and the Russian Federation: Countervailing Duty Orders*, 86 Fed. Reg. 18,037 (Dep’t Commerce Apr. 7, 2021); *see also Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Phosphate Fertilizers from the Russian Federation*, C-821–825, POR 1/1/2019–12/31/2019 (Dep’t Commerce Feb. 8, 2021) (“IDM”).

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<sup>1</sup> In the Remand Results, Commerce stated the following companies were cross-owned with JSC Apatit: PhosAgro PJSC; PhosAgro-Belgorod LLC; PhosAgro-Don LLC; PhosAgro-Kuban LLC; PhosAgro-Kursk LLC; PhosAgro-Lipetsk LLC; PhosAgro-Orel LLC; PhosAgro-Stavropol LLC; PhosAgro-Volga LLC; PhosAgro-SeveroZapad LLC; PhosAgro-Tambov LLC; and Martynovsk AgrokhimSnab LLC. Remand Results at 2.

<sup>2</sup> EuroChem is cross-owned with Joint Stock Company Kovdorskyy GOK (“KGOK”). Remand Results at 1.

In *Mosaic*, the court sustained aspects of Commerce’s tier-three benchmark calculation for natural gas. 589 F. Supp. 3d at 1314–15. The court remanded the matter, however, for Commerce to: (1) adjust the final total sales calculation for EuroChem; (2) either remove the added value-added tax (“VAT”) and import duties from the natural gas benchmark price or offer further explanation as to why there was no double counting; and (3) either abandon the cut-off date methodology and countervail mining right licenses for phosphate rock or explain what specific reforms justified the market economy cut-off date for valuing mining rights in Russia. *Id.* at 1315–24.

Following remand, Commerce: (1) adjusted the total sales calculation for EuroChem;<sup>3</sup> (2) removed the added VAT and import duties from the natural gas benchmark; and (3) countervailed recurring subsidies from phosphate rock mining licenses prior to April 1, 2002, after dropping the cut-off date, under protest. Remand Results at 1–2.

At issue in this case is the calculation of the benefit received by Mandatory Respondents for two inputs: natural gas and phosphate rock. The Remand Results do not adequately address all of the court’s concerns in *Mosaic* and the Remand Results are not supported by substantial evidence. Accordingly, the court once again remands with further instructions.

## JURISDICTION & STANDARD OF REVIEW

The court’s jurisdiction continues pursuant to 19 U.S.C. § 1516a(a)(2)(B)(i) and 28 U.S.C. § 1581(c). The court sustains Commerce’s final redetermination results unless they are “unsupported by substantial evidence on the record, or otherwise not in accordance with law[.]” 19 U.S.C. § 1516a(a)(2)(B)(i). “The results of a redetermination pursuant to court remand are also reviewed for compliance with the court’s remand order.” *U.S. Steel Corp. v. United States*, 41 CIT \_\_, \_\_, 219 F. Supp. 3d 1300, 1307 (2017) (internal quotations and citations omitted).

## DISCUSSION

### I. Tier-Three Natural Gas Benchmark

To calculate the benefit for the *ad valorem* subsidy rate, Commerce utilized a tier-three benchmark to assess the unsubsidized value of

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<sup>3</sup> On remand, Commerce recalculated EuroChem’s total sales to include transactions with an intercompany party that had been previously excluded. Remand Results at 7–8. No party challenges Commerce’s recalculation of EuroChem’s total sales. See Gov’t Resp. in Supp. of Remand Results at 23, ECF Nos. 114–115 (April 6, 2023). Accordingly, the court will not address this issue further.



natural gas used by EuroChem and PhosAgro. *See IDM* at 53. Commerce adopted Mosaic’s proposed International Energy Agency (“IEA”) data regarding European countries’ natural gas prices to calculate the benchmark. *See IDM* at 53–54; *see also Letter from Wilmer Cutler Pickering Hale and Dorr LLP to Sec of Commerce Pertaining to Mosaic Benchmark Submission, Mosaic Russia* at Ex. 14, Part II.B, P.R. 245 (Nov. 2, 2020) (“*Petitioner’s Benchmark Submission*”). The IEA data included EU export VAT in the proposed benchmark price data. *Id.* Because the government of Russia (“GOR”) reported that natural gas imports would be subject to a 20% VAT and 5% import duty, Commerce added those same escalators to the benchmark price. *IDM* at 57.

The court sustained much of Commerce’s determination, but remanded Commerce’s adjustments that added Russian VAT and import duties that reflected duties that would be imposed on natural gas imported into Russia. *Mosaic*, 589 F. Supp. 3d at 1315. The court was concerned that Commerce may have double counted VAT because the IEA data included European export VAT, and Commerce added an additional import-specific 20% VAT and 5% import duty. *See id.*; *see also Petitioner’s Benchmark Submission* at Ex. 14; *IDM* at 57. Further, the court observed that 19 C.F.R. § 351.511(a)(2)(iv), the regulation authorizing Commerce to add “delivery charges and import duties” to a benchmark price, expressly applied only to tier-one and tier-two benchmarks. *See Mosaic*, 589 F. Supp. 3d at 1315. As a result, the court remanded to Commerce to either remove the added VAT and import duties or explain why it was reasonable to add the duties and confirm that there was no double counting. *Id.*

On remand, Commerce explained that the regulations do not prescribe a specific methodology for tier-three benchmarks because different methodologies might be necessary to fit different fact patterns. Remand Results at 10–11. Because Commerce was using the IEA data as a proxy for a market-determined price, Commerce continued to find that it would be appropriate to include VAT and import duties when they would be applied if the respondent imported the natural gas from the world market. Remand Results at 11. Commerce, however, removed the VAT and import duties because the IEA data already included European export VAT and other taxes in order for Commerce to avoid the possibility of double counting. Remand Results at 11. Specifically, Commerce found that the “total price” data included “total tax” figures that were “VAT and, in some cases, other taxes such as excise taxes.” Remand Results at 17. Thus, Commerce concluded that the reasonable approach to address the ambiguity was

to remove the import-specific 20% VAT and 5% import duty to avoid potential double-counting taxes. Remand Results at 18.

A foreign government's provision of goods to a respondent for LTAR constitutes a benefit. 19 U.S.C. § 1677(5)(E)(iv). In such circumstances, Commerce determines the amount of the subsidy by comparing remuneration actually paid to a market-determined price for the goods or services, under "a three-tiered hierarchy" employed by Commerce "to determine the appropriate remuneration benchmark." *Changzhou Trina Solar Energy Co. v. United States*, 42 CIT \_\_, \_\_, 352 F. Supp. 3d 1316, 1332 (2018); see 19 C.F.R. § 351.511(a)(2)(i)–(iii).

In the absence of a tier-one benchmark, Commerce turns to a tier-two benchmark "by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question." 19 C.F.R. § 351.511(a)(2)(ii). "In measuring adequate remuneration under [tier-one benchmarks] or [tier-two benchmarks], [Commerce] will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product." *Id.* § 351.511(a)(2)(iv). "If there is no world market price available to purchasers in the country in question," however, Commerce moves on to a tier-three analysis and "measure[s] the adequacy of remuneration by assessing whether the government price is consistent with market principles." *Id.* § 351.511(a)(2)(iii). If Commerce determines that the government price is not consistent with market principles it will look to construct an external benchmark. *Canadian Solar Inc. v. United States*, 45 CIT \_\_, \_\_, 537 F. Supp. 3d 1380, 1389 n.6 (2021). "It is within Commerce's discretion to weigh the relevant factors." *Id.* at 1391.

Section 351.511(a)(2)(iv) is silent as to whether Commerce is to adjust the benchmark price for tier-three benchmarks. See 19 C.F.R. § 351.511(a)(2)(iv). The regulations do not compel any specific methodology for Commerce to follow for a tier-three benchmark. Thus, Commerce has some matter of discretion in its calculation. The IEA data contain natural gas "Total price" for European countries along with "Excise tax" and "VAT" figures grouped as "Total tax." See *Petitioner's Benchmark Submission* at Exs. 14–15. There is at least some ambiguity regarding what is included as "Total tax" because it includes more than just VAT. As Mosaic correctly points out, however, nothing in the submission indicates that import duties would have been included as part of "excise tax" or any other figure. See Mosaic Co.'s Cmts. on Remand Redetermination at 15–16, ECF No. 103–104 (Feb. 7, 2023) ("Mosaic Br."); *Petitioner's Benchmark Submission* at Ex. 14.

Regardless, the court's remand order required Commerce to provide a compelling reason for including the import duties under the factual scenario here, and Commerce did not do so. *See Mosaic* 589 F. Supp. 3d at 1315; Remand Results at 4–5, 11. Commerce relied on a tier-three benchmark because it could not construct a world market tier-two price as Russia could not import natural gas as the pipelines only flowed away from Russia. *See IDM* at 51–54. There is still no reason to treat the tier-three hypothetical market price as an import price under these facts. As a result, Commerce did not err by not including the import-specific 20% VAT and 5% import duty in the benchmark price. Accordingly, Commerce's tier-three benchmark calculation for natural gas is sustained.

## **II. Commerce's Decision Not to Apply the Cut-Off Date for Phosphate Rock Mining Rights**

In its original administrative decision, Commerce determined that it could not measure subsidies in the Russian economy before April 1, 2002, the date on which Russia was designated a market economy (“ME”). *See IDM* at 23; *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 Fed. Reg. 49,935 (Dep't Commerce July 29, 2016) (“*Russia Cold-Rolled Steel*”), and accompanying memorandum, *Market Economy Status for the Russian Federation*, C-821–823, POR 1/1/2014–12/31/2014 (Dep't Commerce Sept. 14, 2015) (“*ME Status for the GOR Memo*”). Accordingly, Commerce declined to countervail several of the licenses for phosphate rock mining rights issued by the GOR to EuroChem, cross-owned with KGOK, and PhosAgro, cross-owned with JSC Apatit. *See IDM* at 24; *Response from Mayer Brown, LLP to Sec of Commerce Pertaining to Ministry, Initial QR* at Ex. II–1, P.R. 131, C.R. 305 (Sept. 25, 2020).

In *Mosaic*, the court instructed Commerce to either abandon its cut-off date methodology or to explain why it is unable to countervail what it otherwise treated as recurring subsidies from the licenses granted by the GOR prior to its designation as a ME. *See Mosaic*, 589 F. Supp. 3d at 1320–22. The court explained that Commerce's cut-off date was unsupported because Commerce did not reference specific legal reforms that permitted the measurement of mining rights or similar subsidies beginning on April 1, 2002, in the Russian economy. *See id.* Further, the court observed that Commerce treated the one license it analyzed as providing a recurring subsidy, and calculated the benefit by comparing “the actual per-unit cost build-up of KGOK's beneficiated phosphate rock” during the period of investigation

(“POI”). *Id.* Thus, the court concluded that Commerce could apply the same methodology to all the mining licenses because it did not rely on the initial financial contribution when the GOR granted the license, i.e. prior to its designation as a ME country.<sup>4</sup> *See id.*

On remand, Commerce determined not to apply the cut-off date methodology, under respectful, but unexplained, protest. Remand Results at 12. Commerce proceeded to request and receive additional information on the mining rights to countervail the benefit of the remaining licenses. Remand Results at 12–13.

Now, PhosAgro challenges Commerce’s decision not to apply the cut-off date. PhosAgro and JSC Apatit Cmets. on Remand Redetermination at 3–6 ECF No. 101–102 (Feb. 7, 2023) (“PhosAgro Br.”). PhosAgro argues that the April 1, 2022, cut-off date was supported by the 2015 Market Economy Status Memorandum, which discussed the GOR’s control over production, land ownership, and the allocation of resources, even though it did not explicitly discuss mining rights. *Id.* PhosAgro asserts that Commerce could not identify and measure subsidies in Russia before April 1, 2002, and has not provided any evidence for why it is able to countervail mining licenses now.<sup>5</sup> *Id.* at 6.

In 2012, Congress amended Section 701 of the Tariff Act of 1930 to require that Commerce impose countervailing duties on merchandise imported from NME countries. *See* 19 U.S.C. § 1671(f)(1). Commerce is only relieved of imposing CVDs where it cannot “identify and measure” subsidies because the NME country’s economy is “essentially comprised of a single entity.” *Id.* § 1671(f)(2). Following that amendment, the court has only permitted Commerce to apply a cut-

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<sup>4</sup> It is irrelevant to this proceeding at issue that the GOR has now been designation a non-market economy (“NME”) for antidumping purposes. *See* Press Release, International Trade Administration, U.S. Department of Commerce Revokes Russia’s Market Economy Status in Antidumping Proceedings (Nov. 10, 2022), <https://www.trade.gov/press-release/us-department-commerce-revokes-russias-market-economy-status-antidumping-proceedings> (last accessed June 29, 2023).

<sup>5</sup> The court previously ordered Commerce to either abandon the cut-off date methodology or articulate specific reforms that supported the cut-off date for mining licenses in Russia. *See Mosaic*, 589 F. Supp. 3d at 1322. PhosAgro points to two reforms on the record that it believes sufficiently support the cut-off date: the private use of land and allocation of resources. *See* PhosAgro Br. at 5. First, the court has already rejected the 2001 law on land privatization’s applicability to these subsidies because the GOR leases ore-rich land to private companies to mine—“land privatization is inapplicable to these facts.” *See Mosaic*, 589 F. Supp. 3d at 1322; *ME Status for the GOR Memo* at 16; *see generally IDM*. And second, Commerce’s memorandum does not discuss mining rights in relation to the allocation of resources. *See ME Status for the GOR Memo* at 16–20, 30. PhosAgro fails to identify any specific legal reform on the record that relate to the “particular type of subsidy” at issue here. *See TMK IPSCO v. United States*, 41 CIT \_\_, \_\_, 222 F. Supp. 3d 1306, 1314 (2017) (“*TMK IPSCO II*”). Thus, PhosAgro fails to show support for applying the April 1, 2002, cut-off date or any other cut-off date.

off date given evidence of reforms newly permitting the identification and measurement of specific types of subsidies in a NME country. In *TMK IPSCO*, the court required Commerce to provide specific evidence justifying its use of the day the People’s Republic of China (“PRC”) ascended to the World Trade Organization as the cut-off date for imposing CVD. *See TMK IPSCO v. United States*, 40 CIT \_\_, \_\_, 179 F. Supp. 3d 1328, 1343 (2016) (“*TMK IPSCO I*”), *aff’d on remand*, *TMK IPSCO II*, 41 CIT at \_\_, 222 F. Supp. 3d at 1314. Remanding for further explanation, the court required Commerce to “allocate subsidies beginning on the first date it could identify and measure the subsidy considering the particular program in question” and to identify “the impact of relevant economic reforms on that program.” *TMK IPSCO I*, 40 CIT at \_\_, 179 F. Supp. 3d at 1344.

The court subsequently upheld Commerce’s cut-off dates when Commerce identified four types of subsidies and specific economic reforms that made each subsidy identifiable and measurable. *TMK IPSCO II*, 41 CIT at \_\_, 222 F. Supp. 3d at 1314–15. Commerce noted that the PRC’s 1994 Company Law permitted private actors to freely participate in commercial activity, allowing Commerce to measure grant program subsidies in the Chinese economy. *Id.* at 1314. Commerce further identified laws passed in 1994, 1996, and 1999 that created unique cutoff dates for the measurement of credit, tax, and land-oriented subsidies. *Id.* at 1314–15. In so doing, the court held that Commerce fulfilled its duty under § 1671(f) by “articulat[ing] a rational relationship between specific legal reforms in China and the effect of such reforms on Commerce’s ability to identify and measure subsidies.” *Id.* at 1314. Thus, although Commerce has “significant discretion in determining whether it can identify and measure subsidies . . . within the NME country,” the court only found Commerce’s cut-off date analysis reasonable after Commerce provided evidence of legal reforms impacting specific programs. *See id.* at 1313. Thus, with countries partially or fully transitioned to ME status, the issue is the measurability of particular subsidies.

PhosAgro’s challenge to Commerce’s decision not to apply the cut-off date fails. Commerce is able to measure the value of the phosphate rock mining license because Commerce’s methodology did not look at the issuance of the license before Russia achieved ME status but instead looked to the actual cost build-up of the mining.<sup>6</sup> *See IDM* at 26; *see also* 19 U.S.C. § 1671(f)(2). By treating the licenses as a recurring subsidy, Commerce demonstrated that no necessary factual

<sup>6</sup> The licenses were not auctioned in a manner that would result in a usable value figure. *See Mosaic*, 589 F. Supp. 3d at 1322.

information was missing from the period prior to Russia's designation as a ME country. For the purpose of this proceeding, Russia is a ME country. Thus, subsidies are presumed to be measurable. *See* 19 U.S.C. § 1671. Commerce could identify and measure subsidies stemming from the mining licenses issued before April 1, 2002, and § 1671(f)(2) does not apply.

In abandoning the cut-off date methodology, Commerce properly selected one of the options allowed by the court's remand order. Nothing in the record regarding Russian mining rights undermines Commerce's reasonable exercise of discretion. If Commerce attempted to calculate the benefit of the mining license by looking at the original auction, then PhosAgro might have some argument for a particular cut-off date. Instead, Commerce's methodology looked at annual costs to determine the recurring benefit of the license. Accordingly, Commerce complied with the court's remand order, and the decision to countervail the phosphate rock mining licenses is supported by substantial evidence.

### **III. Mining Rights for Phosphate Rock Benchmark**

After deciding not to apply the cut-off date, Commerce requested and received supplemental information about the mining rights held by PhosAgro and EuroChem prior to April 1, 2002. Commerce issued questionnaires requesting that the Mandatory Respondents: provide all costs incurred to mine phosphate ore during the POI; reconcile the cost data to 2019 financial statements; and “[s]upport your reported costs with documentation maintained in the normal course of business.” *Commerce Letter Pertaining to PhosAgro PJSC Supp. Questionnaire*, R.P.R. 2 (Oct. 14, 2022); *Commerce Letter Pertaining to EuroChem Supp. Questionnaire*, R.P.R. 1 (Oct. 14, 2022). PhosAgro and EuroChem provided information about the reported costs of their phosphate mining operations during the POI. *Response from Squire Patton Boggs (US) LLP to Sec of Commerce Pertaining to EuroChem's Supp. QR* at 1–2, R.P.R. 10, R.C.R. 3–4 (Oct. 25, 2022) (“*EuroChem's Remand SQR*”); *Response from Hogan Lovells US LLP to Commerce Pertaining to JSC Apatit Supp. QR* at 3–4, R.P.R. 9, R.C.R. 1–2 (Oct. 25, 2022) (“*PhosAgro's Remand SQR*”).

Mosaic submitted comments that raised alleged deficiencies in PhosAgro and EuroChem's reported costs. *Mosaic Cmts. On Draft Remand Determination* at 3–9, R.P.R. 22, R.C.R. 13 (Dec. 1, 2022). Specifically, Mosaic claimed that PhosAgro failed to reconcile its reported mining costs on the financial statements, and thus, Commerce could not verify the costs. *Id.* at 5–6. Further, Mosaic asserted that EuroChem failed to support its reported costs for mining and benefi-

ciation<sup>7</sup> operations. *Id.* at 8–9. Mosaic requested that Commerce seek additional information from PhosAgro and EuroChem. *Id.* at 3–9.

In the Remand Results, Commerce disagreed with Mosaic’s objections to EuroChem’s and PhosAgro’s reported production costs. Remand Results at 19–24. Relying on the submissions, Commerce found the mining licenses countervailable, assigning an 8.08% rate for PhosAgro but determining that EuroChem received no measurable benefit. Remand Results at 13.

Now, Mosaic argues that there were significant flaws found in respondents’ cost information submissions that required Commerce to issue follow-up questionnaires. Mosaic Br. at 4–13. Meanwhile, PhosAgro challenges Commerce’s methodology for the benchmark calculation. First, PhosAgro argues that Commerce unlawfully calculated the benefit by using a consolidated “Profit Before Tax” figure instead of a “Gross Profit” figure in order to account for exported phosphate rock prices. PhosAgro Br. at 6–7. Second, PhosAgro asserts that Commerce failed to include all of maintenance costs, inflating the benefit. PhosAgro Br. at 11–14. Finally, PhosAgro contends that Commerce failed to exclude the cost of sales sold to affiliates as required by regulation. PhosAgro Br. at 14–17.

### **A. Commerce’s Acceptance of PhosAgro’s and EuroChem’s Cost Information Over Mosaic’s Objections**

Mosaic argues that Commerce erred by accepting PhosAgro and EuroChem’s submissions without additional questionnaires when Mosaic had identified flaws in the data. Mosaic Br. at 5. Mosaic asserts that PhosAgro’s submission was flawed because it failed to reconcile costs to JSC Apatit’s financial statements. Mosaic Br. at 7–9. Further, Mosaic contends that Commerce failed to address deficiencies in KGOK’s cost information because EuroChem’s summary was in Russian without translation and some of the reported costs did not appear to be related to phosphate production. Mosaic Br. at 10–11. Finally, Mosaic argues that Commerce acted arbitrarily by varying from its procedures in *Phosphate Fertilizers from Morocco*, where it “scrutinized” reported costs and only relied on direct costs from mining rights. Mosaic Br. at 11–12.

“Commerce has a duty to determine CVD rates as accurately as possible.” *Canadian Solar Inc. v. United States*, 45 CIT \_\_, \_\_, 537 F. Supp. 3d 1380, 1395 (2021). To do so, sometimes Commerce must

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<sup>7</sup> In mining, beneficiation is the treatment of a raw ore to improve its economic properties.

issue supplemental questionnaires. The court reviews Commerce's decision not to issue a supplemental questionnaire for substantial evidence. *See e.g., Mittal Steel USA, Inc. v. United States*, 31 CIT 1395, 1400 (2007) (sustaining Commerce's determination because domestic plaintiff failed to show that Commerce did not have all the information it needed); *see also PPG Industry v. United States*, 978 F.2d 1232, 1238–39 (Fed. Cir. 1992) (holding that plaintiff failed to show that the alleged missing information addressed the issue at hand or cast doubt on Commerce's conclusion). Commerce has "considerable discretion in deciding whether a party has sufficiently replied to an information request." *Mannesmannrohren-Werke AG v. United States*, 23 CIT 826, 849, 77 F. Supp. 2d 1302, 1321 (1999).

Beginning with PhosAgro's submission, PhosAgro provided Commerce documentation demonstrating mining costs and reconciliation of production costs. *PhosAgro's Remand SQR* at Ex. REM-3–REM-7. The documentation purports to reconcile PhosAgro cost of sales data with PhosAgro's 2019 financial statements showing the same number also for cost of sales. *PhosAgro's Remand SQR*, Ex. REM-3 at 4. Mosaic asserts, however, that PhosAgro did not comply with Commerce's instructions because the questionnaire instructed PhosAgro to reconcile JSC Apatit's costs to JSC Apatit's 2019 financial statements, not the entire PhosAgro group. *See Mosaic Br.* at 8; *PhosAgro's Remand SQR* at 3, Ex. REM-3.

The interpretation of financial documents and if a submission sufficiently satisfied a request is a factual inquiry on which Commerce is entitled to considerable deference. *See Mannesmannrohren-Werke AG*, 23 CIT at 849, 77 F. Supp. at 1321. The court must still be able to review Commerce's rationale for substantial evidence. *See Mittal Steel USA*, 31 CIT at 1400. Here, Mosaic raised specific objections that Commerce did not respond to in the Remand Results. Commerce's questionnaire requested that reported costs be reconciled against JSC Apatit's 2019 financial statements. *PhosAgro's Remand SQR* at 3. When Mosaic raised concerns with the submission that reconciled costs with PhosAgro's 2019 financial statements, Commerce could have provided an explanation as to why this sufficiently complied with the questionnaire. Instead, Commerce did not respond. *See Remand Results* at 22–24. While Commerce responded specifically to one of Mosaic's challenges, it would not have been burdensome to address the entirety of Mosaic's objections. *See id.* at 22–23. Accordingly, Commerce's reliance on PhosAgro's submission is not supported by substantial evidence. On remand, Commerce may ex-



plain why reconciling to PhosAgro’s statements was sufficient and respond to Mosaic’s objection or seek further information from the respondent.

Regarding EuroChem’s submission,<sup>8</sup> Mosaic raised specific objections to the data that some of the submitted spreadsheets were in Russian and untranslated, specific products included as costs did not appear to be related to phosphate production, and some of the calculations lacked an explained methodology. *Petitioner Cmts. on Draft Remand* at 8–9, R.C.R. 13 (Dec. 1, 2022). Many of EuroChem’s submitted spreadsheets are in Russian without translation. *EuroChem’s Remand SQR*, Ex. 6. The court also notices, however, that the cost calculation, including itemized variable costs and fixed costs, are in English. *Id.* In the Remand Results, Commerce’s only response was that there was “no basis in the record to doubt the veracity of EuroChem’s . . . books and records upon which they relied to report these costs.” Remand Results at 22.

This is an insufficient response. In the light of specific objections, Commerce must provide the court an explanation for rejecting a challenge in order for the court to review it for substantial evidence. And Commerce’s regulations and supplemental questionnaire required EuroChem to submit documents in a foreign language with an English translation. *See* 19 C.F.R. § 351.202(e); *EuroChem’s Remand SQR* at 1. As currently set forth in the Remand Results, the court cannot ascertain on what basis Commerce accepted EuroChem’s submission as accurate. Accordingly, the court remands for Commerce to explain why it found EuroChem’s submission supported and respond to Mosaic’s specific objections. Commerce may also allow EuroChem to supplement the record with an English translation.

## **B. PhosAgro’s Challenges to Commerce’s Calculation of JSC Apatit’s Mining Rights Benefit**

Commerce calculated the phosphate rock cost of production by dividing JSC Apatit’s reported “Cost of Production” of phosphate rock by the total amount of phosphate rock produced, resulting in a per

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<sup>8</sup> EuroChem suggests that Mosaic failed to exhaust its administrative remedies on this challenge because Mosaic did not object to a similar exhibit in the administrative review before remand. EuroChem Resp. to Mosaic Cmts. on Remand Redetermination at 2–3, ECF No. 113 (April 6, 2023). Although Mosaic did not object to the exhibit originally, in context, significant changes necessitated by the court’s remand make it inappropriate to bar argument based on failure to exhaust remedies. When the issue became sufficiently significant, Mosaic put the relevant argument before Commerce in a case brief during the remand proceedings. *See* Remand Results at 21. Further, the government did not raise any concern with exhaustion. Commerce had the opportunity to respond to Mosaic’s challenges. Accordingly, the court will consider the argument. *See DuPont Teijin Films China Ltd. v. United States*, 38 CIT \_\_, \_\_, 7 F. Supp. 3d 1338, 1354 (2014).

unit cost amount. *PhosAgro Final Remand Calculation*, R.P.R. 26, R.C.R. 17 Dec. 16, 2022). Commerce then multiplied the per unit cost amount by a “profit ratio,” which Commerce calculated by dividing “Profit Before Tax” by the total cost of sales in the financial statements. *Id.* Commerce adopted this methodology only after comments to the draft remand results by Mosaic. *See* Remand Results at 20, 24. Commerce stated that Profit Before Tax was consistent with past practice and with the court’s instruction to use the same methodology as applied in the original proceeding. *See* Remand Results at 24.

PhosAgro first argues that Commerce erred by using its Profit Before Tax instead of Gross Profit in order to calculate the profit for the benchmark calculation. PhosAgro Br. at 6–7. PhosAgro asserts that Gross Profit would be a more accurate profit ratio because it included additional expenses, such as administrative and selling expenses, that are considered when calculating price but are not part of the cost of sales. PhosAgro Br. at 9–10. Alternatively, PhosAgro asks that the court order Commerce to include the additional expenses independently to the profit ratio in order to build a more accurate comparison with the benchmark data, which PhosAgro asserts included similar expenses. PhosAgro Br. at 10–11.

Here, Commerce has not adequately supported its decision to use Profit Before Tax when calculating the profit ratio. PhosAgro claims that using Profit Before Tax instead of Gross Profit would leave important considerations, such as administrative and selling expenses, out of the profit comparison. *See Response from Crowell & Moring LLP to Commerce Pertaining to PhosAgro Sec III QR*, Ex. CVD-6 at 86, P.R. 115–116, C.R. 45–46 (Sept. 24, 2020). Commerce’s explanation for its choice is insufficient for the court to review. Although the court’s remand order instructed Commerce to measure the mining right subsidy using the same methodology as before, the court did not rule on the specific calculations because no party raised any issue with the profit ratio. *See Mosaic*, 589 F. Supp. 3d at 1320. Commerce’s only other support for using Profit Before Tax was stating it was consistent with past practice in *Phosphate Fertilizers from Morocco*<sup>9</sup> and *Cold-Rolled Steel from Russia*.<sup>10</sup> *See* Remand Results at 24–25. Commerce did not proffer why Profit Before Tax was used in

<sup>9</sup> *Phosphate Fertilizers from the Kingdom of Morocco: Final Affirmative Countervailing Duty Determination*, 86 Fed. Reg. 9,482 (Dep’t Commerce Feb. 16, 2021), and accompanying Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Phosphate Fertilizers from the Kingdom of Morocco, C-714–001, POR 1/1/2019–12/31/2019 at Comment 8 (Dep’t Commerce Feb. 16, 2021).

<sup>10</sup> Issues and Decision Memorandum, *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Issues and Decision Memorandum for the Final Determination*, C-821–823, POR 1/1/2014–12/31/2014 at Comment 10–11 (Dep’t Commerce July 29, 2016).

previous proceedings or explain why it produced an accurate result now. And PhosAgro never had an opportunity to argue for using Gross Profit because Commerce did not make the change until the Remand Results. *See* Remand Results at 24. The court remands for Commerce to consider PhosAgro's arguments and explain why it selected Profit Before Tax for the profit ratio.<sup>11</sup>

Next, PhosAgro argues that Commerce erred by excluding JSC Apatit's expenses related to mining licenses that still incurred some expenses during the POI despite JSC Apatit not utilizing them. PhosAgro Br. at 11–13. PhosAgro asserts that Commerce failed to consider the benefit from the program as a whole, which must include expenses on related mining licenses such as land rental payments to the GOR and other incurred costs, even if there was no phosphate rock mined under those licenses. PhosAgro Br. at 13–14. PhosAgro contends that, by excluding these costs, Commerce ignored record evidence that it was required to consider in its decision. PhosAgro Br. at 14.

In calculating CVD margins, Commerce must consider the record as a whole, including evidence contrary to its findings. *See Ceramark Tech., Inc. v. United States*, 38 CIT \_\_, \_\_, 11 F. Supp. 3d 1317, 1321 (2014). Under 19 U.S.C. § 1677(6), “net countervailable subsidy” is defined as the gross amount of the subsidy less three statutory offsets: (A) application fees, deposits, or similar payments necessary to qualify for or receive a subsidy; (B) losses due to deferred receipt of the subsidy, if the deferral is mandated by Government order; and (C) export taxes, duties, or other charges intended to offset the countervailable subsidy. 19 U.S.C. § 1677(6). This is an exclusive list of permissible offsets from a CVD subsidy. *See Kajaria Iron Casting Pvt. Ltd. v. United States*, 156 F.3d 1163, 1174 (Fed. Cir. 1998).

Commerce explained that there is no statute that allows it to provide offsetting credit for mining licenses that did not provide a benefit to PhosAgro. Remand Results at 31. Commerce rejected PhosAgro's request for a “negative benefit” regarding the mining licenses that PhosAgro did not use during the POI because no benefit was conferred. Remand Results at 31–32. Commerce relied on § 1677(6) to conclude that it was not permitted to allow the offsetting credit that PhosAgro sought. Remand Results at 31–32.

Here, Commerce's exclusion of the expenses related to unused mining licenses was supported by substantial evidence. Commerce did not ignore the expenses as PhosAgro asserts because Commerce di-

<sup>11</sup> Despite receiving questions in advance of oral argument, the government appeared unwilling to address various issues, in particular matters relating to the profit ratio. The court suggests that, if an issue cannot be addressed because Commerce did not consider it, the proper recourse is to request remand for that purpose.

rectly explained why it would not grant the adjustment PhosAgro sought. Remand Results at 31. And Commerce correctly concluded that it lacked the statutory authority to provide an offset based on these expenses. Section 1677(6) is an exclusive list, and the fees paid for unused mining licenses does not fit the statutory framework as an application fee, deposit, or similar payment. *See* 19 U.S.C. § 1677(6)(A). Thus, Commerce's exclusion of these costs from calculating the benefit was supported by substantial evidence.

Finally, PhosAgro argues that Commerce unlawfully included JSC Apatit's intercompany sales of phosphate rock in the benefit calculation, and instead Commerce should have relied only on sales to third parties. PhosAgro Br. at 14–17. PhosAgro asserts that it is Commerce's general practice to exclude intercompany sales, which it followed when it excluded the sales from EuroChem's calculation. PhosAgro Br. at 16. PhosAgro acknowledges, however, that the exclusion of intercompany sales is the methodology for determining total sales in subsidy rates, but suggests that it should be consistently applied to benefit calculations as well. PhosAgro Br. at 15–17.

In *Mosaic*, the court took no issue with Commerce's methodology to determine EuroChem's total sales by removing intercompany sales among producers and input suppliers. *See Mosaic*, 589 F. Supp. 3d at 1319. The court noted that this methodology was required by 19 C.F.R. § 351.525(b)(6)(ii) and (iv) to determine the *ad valorem* subsidy denominator. *Id.*

After remand, in response to PhosAgro's request to remove intercompany sales from the benefit calculation, Commerce explained that its practice of excluding intercompany sales was for calculating total sales under 19 C.F.R. § 351.525(b)(6). Remand Results at 26. Commerce distinguished PhosAgro's request because the request was related to calculating the benefit under 19 C.F.R. § 351.511(a)(2)(iii), which, here, Commerce used the actual per-unit cost buildup to determine. Remand Results at 26. Commerce also reasoned that there was no reason to exclude intercompany sales because the purpose of the benefit calculation is to determine an accurate per-unit cost of mining phosphate rock, which an eventual sale of phosphate rock to any party does not impact. Remand Results at 27.

Here, Commerce has considered PhosAgro's request and provided sufficient reasoning to justify its use of intercompany sales. The regulation requiring the exclusion of intercompany sales, § 351.525(b), does not apply to determine what Commerce is required to account for as part of the benefit. 19 C.F.R. § 351.525. As Commerce recognized, whenever JSC Apatit mines phosphate rock and processes it, it generates a benefit regardless of whether the rock is sold

to an intercompany entity or to a third party. *See* Remand Results at 27. Thus, it is reasonable for Commerce to include intercompany sales when a regulation does not require their exclusion. PhosAgro cites no authority to the contrary. Accordingly, Commerce's treatment of intercompany sales is supported by substantial evidence.

### CONCLUSION

For the foregoing reasons, the court remands to Commerce for a determination consistent with this opinion. The remand shall be issued within 60 days hereof. Comments may be filed 30 days thereafter and any response 15 days thereafter.

Dated: July 11, 2023

New York, New York

*/s/ Jane A. Restani*

JANE A. RESTANI, JUDGE

## Slip Op. 23–100

DANYANG WEIWANG TOOLS MANUFACTURING CO., LTD. et al., Plaintiffs, v.  
UNITED STATES, Defendant, and DIAMOND SAWBLADES MANUFACTURERS'  
COALITION, Defendant-Intervenor.

Before: Claire R. Kelly, Judge  
Court No. 19–00006

[Sustaining Commerce’s remand results on the 2016–2017 administrative review of the antidumping duty order covering diamond sawblades from the People’s Republic of China.]

Dated: July 12, 2023

*Brittney R. Powell*, Fox Rothschild LLP of Washington, DC, for plaintiffs Danyang Weiwang Tools Manufacturing Co., Ltd., Chengdu Huifeng New Material Technology Co., Ltd., and Quanzhou Zhongzhi Diamond Tool Co., Ltd. Also on the brief was *Lizbeth R. Levinson*.

*Franklin E. White, Jr.*, Assistant Director, and *Meen Geu Oh*, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice of Washington, DC, for defendant United States. Also on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, and *Patricia M. McCarthy*, Director. Of counsel was *Benjamin W. Jewelier*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, DC.

*Daniel Brian Pickard*, Buchanan Ingersoll and Rooney PC of Washington, DC, for defendant-intervenor Diamond Sawblades Manufacturers’ Coalition.

### **OPINION AND ORDER**

#### **Kelly, Judge:**

Before the Court is the U.S. Department of Commerce’s (“Commerce”) remand results filed pursuant to the Court’s order, *see* Order, Jan. 13, 2023, ECF No. 46, in connection with Commerce’s final determination in the 2016– 2017 administrative review of the anti-dumping duty (“ADD”) order on diamond sawblades and parts thereof (“diamond sawblades”) from the People’s Republic of China (“China”). Final Results of Redetermination Pursuant to Ct. Remand, A-570900 (Dep’t Commerce Apr. 13, 2023), ECF No. 49–1 (“Remand Results”); *see [Diamond Sawblades] from [China]*, 83 Fed. Reg. 64,331 (Dep’t Commerce Dec. 14, 2018) (final results of ADD admin. review; 2016–2017), and accompanying Issues & Decision Mem., A-570–900 (Dec. 10, 2018), ECF No. 18–5 (“Decision Mem.”).

### **BACKGROUND**

Commerce’s 2016–2017 administrative review of the ADD order on diamond sawblades from China covers the period of review of November 1, 2016, to October 31, 2017. Decision Mem. at 1. During the

administrative review, the separate-rate respondents,<sup>1</sup> including Plaintiffs, challenged Commerce’s assignment of the 82.05 percent China-wide ADD rate to the separate-rate respondents. *Id.* at 3; Compl. ¶¶ 8, 12–13, Feb. 6, 2019, ECF No. 7. The 82.05 percent rate reflects Commerce’s application of facts available with an adverse inference (“AFA”)<sup>2</sup> to the two mandatory respondents for their failure to respond to Commerce’s requests for information. Decision Mem. at 3. The respondents argued Commerce unreasonably included an AFA rate in the averaged margin assigned to cooperative non-selected respondents. *See id.* at 3–4. The petitioner argued Commerce should continue to apply the rate of 82.05 percent for the non-selected separate rate respondents because it was the rate calculated in the previous administrative review. *Id.* at 5. In its final determination, Commerce continued to assign the non-selected separate rate respondents, including Plaintiffs, the separate rate of 82.05 percent assigned to the non-selected separate rate respondents in the previous administrative review. *Id.* at 6–7.

Plaintiffs filed their complaint on February 6, 2019, requesting the Court declare as contrary to law Commerce’s assignment of the 82.05 percent separate rate to Plaintiffs as equal to the China-wide rate and equal to the total AFA rate. Compl. at 7. On July 1, 2019, Plaintiffs moved for judgment on the record. *See* ECF No. 25–2. On January 13, 2020, the Court granted Plaintiffs’ unopposed motion to stay the proceedings pending resolution of *Bosun Tools Co., Ltd. v. United States*, Consol. Ct. No. 18–102. Order, Jan. 13, 2020, ECF No. 35; Pls.’ Unopposed Mot. Stay, Jan. 13, 2020, ECF No. 34. In *Bosun Tools Co., Ltd. v. United States*, 405 F. Supp. 3d 1359, 1367 (Ct. Int’l Trade 2019), where the previous administrative review of diamond sawblades from China was at issue, the Court instructed Commerce to reconsider the rate applicable to the mandatory respondents previously found to be non-cooperative and subject to the 82.05 percent AFA rate. The Court also ordered Commerce to adjust the separate rate respondents’ rates accordingly if Commerce determined a different rate applied to the mandatory respondent. *See id.*

<sup>1</sup> Separate-rate respondents are those respondents covered by an ADD or countervailing duty investigation or administrative review in a nonmarket economy, who request a rate separate from the countrywide duty rate Commerce imposed based on its investigation of the mandatory respondents. *See Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1373–74 (Fed. Cir. 2013).

<sup>2</sup> Parties and Commerce sometimes use the shorthand “adverse facts available” or “AFA” to refer to Commerce’s reliance on facts otherwise available with an adverse inference to reach a final determination. However, AFA encompasses a two-part inquiry pursuant to which Commerce must first identify why it needs to rely on facts otherwise available, and second, explain how a party failed to cooperate to the best of its ability as to warrant the use of an adverse inference when “selecting among the facts otherwise available.” *See* 19 U.S.C. § 1677e(a)–(b).

On remand in *Bosun Tools*, 493 F. Supp. 3d 1351, 1357–58 (Ct. Int’l Trade 2021), the Court sustained Commerce’s revision of the separate rate from 82.05 percent to 41.03 percent, and the Court of Appeals affirmed, No. 2021–1930, 2022 WL 94172 (Fed. Cir. Jan. 10, 2022). On January 13, 2023, Defendant filed an unopposed motion for remand to consider the effect of *Bosun Tools* on this case, see ECF No. 45, which the Court granted, see ECF No. 46. Commerce filed its Remand Results on April 13, 2023.

### JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction pursuant to 28 U.S.C. § 1581(c) (2018), which grants the court authority to review actions initiated under 19 U.S.C. § 1516a(a)(2)(B)(iii)<sup>3</sup> contesting the final determination in an administrative review of an ADD order. The Court will uphold 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). Substantial evidence “means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Matsushita Elec. Indus. Co. v. United States*, 750 F.2d 927, 933 (Fed. Cir. 1984) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). “The results of a redetermination pursuant to court remand are also reviewed ‘for compliance with the court’s remand order.’” *Xinjiaimei Furniture (Zhangzhou) Co. v. United States*, 968 F. Supp. 2d 1255, 1259 (Ct. Int’l Trade 2014) (quoting *Nakornthai Strip Mill Public Co. v. United States*, 32 CIT 1272, 1274, 587 F. Supp. 2d 1303 (2008)).

### DISCUSSION

On remand, Commerce applies *Bosun Tools*, No. 2021–1930, 2022 WL 94172, to its administrative review of the ADD order on diamond saw blades from China and determines that the appropriate rate to apply to Plaintiffs is 41.03 percent. Remand Results at 1–3. Commerce revised the rate for the separate rate respondents in the preceding administrative review of the ADD order, and Commerce therefore revises the rate applying to Plaintiffs in the current administrative review. *Id.* at 3. In their comments on remand, Plaintiffs agree with Commerce’s decision to revise the rate to 41.03 percent consistent with the preceding administrative review. Pls.’ Comments on [Remand Results] at 2, May 12, 2023, ECF No. 51. Defendant-Intervenor did not file comments on the Remand Results. Commerce’s Remand Results are reasonable, see *Matsushita*, 750

<sup>3</sup> Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2018 edition.



F.2d at 933, and comply with the Court's Remand Order, *see Xinji-amei*, 968 F. Supp. 2d at 1259.

**CONCLUSION**

For the foregoing reasons, the Remand Results are supported by substantial evidence, comply with the Court's remand order, *see* ECF No. 46, and are therefore sustained. Judgment will enter accordingly.

Dated: July 12, 2023

New York, New York

*/s/ Claire R. Kelly*

CLAIRE R. KELLY, JUDGE



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