U.S. Customs and Border Protection

PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF RICE PROTEIN POWDER

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of rice protein powder.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of rice protein powder under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before October 6, 2023.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Monique Moore, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Monique Moore at (202) 325–1826.

FOR FURTHER INFORMATION CONTACT: Tanya Secor, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0062.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of rice protein powder. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N308405, dated January 9, 2020 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N308405, CBP classified rice protein powder in heading 3504, HTSUS, specifically in subheading 3504.00.50, HTSUS, which provides for "Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed: Other." CBP has reviewed NY N308405 and has determined the ruling letter to be in error. It is now CBP's

position that rice protein powder is properly classified, in heading 2106, HTSUS, specifically in subheading 2106.10.00, HTSUS, which provides for "Food preparations not elsewhere specified or included: Protein concentrates and textured protein substances."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N308405 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H315652, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

N308405

January 9, 2020
CLA-2–35:OT:RR:NC:N1:136
CATEGORY: Classification
TARIFF NO.: 3504.00.5000; 9903.88.15

MR. LUCAS A. ROCK
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT, LLP
599 LEXINGTON AVENUE
NEW YORK, NY 10022

RE: The tariff classification of "AdvantaPea Essential 80 and AdvantaRice Premier 300" from China

DEAR MR. ROCK:

In your ruling request dated December 16, 2019, on behalf of you client, Top Health Ingredients, Inc., you requested a tariff classification ruling on "AdvantaPea Essential 80 and AdvantaRice Premier 300."

Your submission describes "AdvantaPea Essential 80" as a pea protein isolated powder made from peas grown in Canada and shipped to China for processing. This product consists of 80 percent or greater pea protein on a dry basis and is used by food manufactures as an ingredient in various food applications. "AdvantaRice Premier 300" is described as a rice protein powder consisting of 80 percent or greater rice protein on a dry basis and is used by food manufactures as an ingredient in various food applications.

The applicable subheading for "AdvantaPea Essential 80 and AdvantaRice Premier 300" will be 3504.00.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed: Other. The general rate of duty will be 4 percent ad valorem.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 3504.00.5000, HTSUS, unless specifically excluded, are subject to an additional 15 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.15, in addition to subheading 3504.00.5000, listed above.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, you may refer to the relevant parts of the USTR and CBP websites, which are available at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions* and *https://www.cbp.gov/trade/remedies/301-certain-products-china*, respectively.

This merchandise may be subject to the Federal Food, Drug, and Cosmetic Act and/or The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which are administered by the U.S. Food and Drug Administration (FDA). Information on the Federal Food, Drug, and Cosmetic Act, as well as The Bioterrorism Act, can be obtained by calling the FDA at 1–888–463–6332, or by visiting their website at www.fda.gov.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at https://hts.usitc.gov/current.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Nuccio Fera at nuccio.fera@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H315652
OT:RR:CTF:FTM H315652 TJS
CATEGORY: Classification
TARIFF NO.: 2106.10.00

MR. LUCAS A. ROCK
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT, LLP
599 LEXINGTON AVENUE
NEW YORK, NY 10022

RE: Modification of NY N308405; Tariff Classification of Rice Protein Powder

DEAR MR. ROCK:

This is in reference to New York Ruling Letter ("NY") N308405 issued to you, on behalf of Top Health Ingredients, Inc., on January 9, 2020, concerning the tariff classification of certain rice protein powder and pea protein powder under the Harmonized Tariff Schedule of the United States ("HTSUS"). In that ruling, U.S. Customs and Border Protection ("CBP") classified the protein powders at issue under subheading 3504.00.50, HTSUS, which provides for "Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed: Other." Upon further review, we have found the classification of the rice protein powder under heading 3504, HTSUS, to be incorrect. For the reasons set forth below, we hereby modify NY N308405.

FACTS:

The product at issue is *AdvantaRice*™ Premier 300. It is a rice protein powder consisting of 80 percent or greater rice protein on a dry basis. The remaining 20 percent consists of residual materials of the protein extraction process such as ash, moisture, and fat. The rice protein powder does not contain additives. The manufacturing process begins with soaking rice flour, which is produced from milling rice. Then, an alkali solution is used to precipitate the protein. Once the excess amount of alkali solution is washed off, the product is sterilized, evaporated, and dried into powder form. The protein is imported in 20kg poly-lined paper bags and sold to food manufacturers for use as an ingredient in various food applications, which according to the importer's website, include bars, chips, protein blends, RTD (ready-to-drink) beverages, and dips. The website further states that *AdvantaRice*™ has a "[m]ild, neutral flavor [that] is easily masked" and "can be used in both sweet and savory formulas."[1]

ISSUE:

What is the tariff classification of the rice protein powder under the HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the

[1] *AdvantaRice*™ - *A High-Protein Alternative*, Top Health Ingredients, https://www.tophealthingredients.com/advantarice (last visited April 28, 2022).

goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI 2 through 6 may then be applied in order.

The 2023 HTSUS provisions under consideration are as follows:

2106:	Food preparations not elsewhere specified or included:
2106.10.00:	Protein concentrates and textured protein substances...
	* * *
3504:	Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed:
3504.00.50:	Other...
	* * *

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While not legally binding, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The ENs to heading 2106, HTSUS, provides in pertinent part as follows:

> Provided that they are not covered by any other heading of the Nomenclature, this heading covers:
>
> (A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.
>
> (B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38).
>
> ...
>
> The heading includes, inter alia:
>
> ...
>
> (6) Protein hydrolysates consisting mainly of a mixture of amino-acids and sodium chloride, used in food preparations (e.g., for flavouring); protein concentrates obtained by the elimination of certain constituents of defatted soya-bean flour, used for protein-enrichment of food preparations; soya-bean flour and other protein substances, textured. However, the heading excludes non-textured defatted soya-bean flour, whether or not fit for human consumption (heading 23.04) and protein isolates (heading 35.04).

* * *

The ENs to heading 3504, HTSUS, provides in pertinent part as follows:

This heading covers:

...

(B) Other protein substances and their derivatives, not covered by a more specific heading in the Nomenclature, including in particular:

(1) Glutelins and prolamins (e.g., gliadins extracted from wheat or rye, and zein extracted from maize), being cereal proteins.

(2) Globulins, e.g., lactoglobulins and ovoglobulins (but see exclusion (d) at the end of the Explanatory Note).

(3) lycinin, the main soya protein.

(4) Keratins obtained from hair, nails, horns, hoofs, feathers, etc.

(5) Nucleoproteids, being proteins combined with nucleic acids, and their derivatives. Nucleoproteids are isolated, for example, from brewer's yeast, and their salts (of iron, copper, etc.) are used mainly in pharmacy.
However, nucleoproteids of mercury answering to a description in heading 28.52 are excluded.

(6) Protein isolates obtained by extraction from a vegetable substance (e.g., defatted soya bean flour) and consisting of a mixture of proteins contained therein. The protein content of these isolates is generally not less than 90%.

* * *

NY N308405 classified the rice protein powder in heading 3504, HTSUS, as "other protein substances and their derivatives, not elsewhere specified or included." Heading 2106, HTSUS, covers food preparations, provided that the product is not covered by any other heading of the HTSUS. The issue here is whether the rice protein powder is classified as a protein substance of heading 3504, HTSUS, or as a food preparation of heading 2106, HTSUS.

According to the ENs to heading 3504, HTSUS, and prior CBP rulings, substances that have been classified in heading 3504 have at least four things in common. First, these protein substances are generally for use in making pharmaceuticals, textiles, or plastics. *See* Headquarters Ruling Letter ("HQ") 950915 (Apr. 3, 1992). Second, the protein substances consist of a very high percentage of protein. Third, the protein in substances of heading 3504 are derived from a single source, such as milk or wheat gluten. *See* HQ H053650 (June 1, 2009); HQ 963306 (Sept. 6, 2000). Lastly, the substances classified in heading 3504, HTSUS, may be mixtures of protein and other substances, such as ash and moisture, but these other substances are a product of the derivation of the protein substance from its source, not a deliberate preparation of different protein substances mixed with flavoring and anti-caking agents. *See* HQ H008628 (Feb. 14, 2008).

The rice protein product under consideration is derived from a single source – rice – which is not mixed with other protein substances, flavoring, or anti-caking agents. However, importantly, the rice protein product is to be used as an ingredient in various food applications for human consumption,

not for making pharmaceuticals, textiles or plastics. Additionally, none of items listed in the ENs specifically describe the rice protein product. For these reasons, we find that heading 3504, HTSUS, does not cover the *AdvantaRice*™ Premier 300.

Heading 2106, HTSUS, covers food preparations. In *Orlando Food Corp. v. United States*, the United States Court of Appeals for the Federal Circuit considered the definition of "preparation" for purposes of classification under the HTSUS. *Orlando Food Corp. v. United States*, 140 F.3d 1437 (1998). The court held that "inherent in the term 'preparation' is the notion that the object involved is destined for a specific use. The relevant definition from *The Oxford English Dictionary* defines 'preparation' as 'a substance specially prepared, or made up for its appropriate use or application, e.g., as food or medicine, or in the arts or sciences.'" *Id*. at 1441 (citing 12 *The Oxford English Dictionary* 374 (2d. ed. 1989)). Under our facts, the subject rice protein powder satisfies the definition of a preparation as it has been prepared and processed for a specific use. In this case, the rice protein powder is specifically used as a protein or nutritional supplement. In the context of "food preparations" for purposes of tariff classification in heading 2106, HTSUS, the finished subject rice protein powder is specifically intended to be incorporated and consumed in food applications.

The ENs for heading 2106, HTSUS, provide that food preparations of heading 2106 include preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. Heading 2106 includes certain preparations for incorporation in food preparations either as ingredients or to improve some of their characteristics. Here, food manufacturers use the rice protein as an ingredient and protein supplement in various food and beverage applications. Therefore, we find that the rice protein powder is a "preparation consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption" within the meaning of the ENs to heading 2106, HTSUS. Conversely, we find that the ENs to heading 3504, HTSUS, do not describe the subject rice protein powder. The ENs to heading 3504, HTSUS, list proteins from specific sources, none of which would include rice as a protein source nor are *ejusdem generis* to the product at issue.

Furthermore, in HQ 950915, CBP distinguished a rice protein powder, which was manufactured and used in a manner similar to the subject rice protein, from products of heading 3504, HTSUS. The rice protein powder of HQ 950915 was described as a precipitate derived from rice that had been steeped, milled, screened and centrifuged. The resulting rice substance was thereafter concentrated, dried, and sieved before being packaged for export. In distinguishing the scope of headings 2106 and 3504, HTSUS, HQ 950915 explained the following:

> In essence, 2106 covers products which serve as, or are incorporated in, food preparations, while 3504 covers products which are not usually consumed, but are used, for instance, in making pharmaceuticals (peptones), textiles and plastics (glutelins and prolamins) and elastic fibers (keratins). The subject product is designed to be used as a protein source in baby foods, nutritional drinks and tablets and, thus, is *ejusdem generis* to the nutritional food products and supplements which have been classified in heading 2106. Its principal use is as a food preparation. *See* Additional U.S. Rule of Interpretation 1(a). As the EN's above stated, a product may still be classified in 2106 even if it may require further

processing to be used as a food preparation or if it is merely used as an ingredient in order to make or improve a beverage or food preparation.

As such, HQ 950915 determined that the rice protein powder was classified according to its principal use as a food preparation in heading 2106, HTSUS. *See also* HQ H008628 (finding that a powdered protein mixture, which was used in shakes, soups, sauces and other foods to enhance their protein content, was *ejusdem generis* to the products classified in heading 2106, HTSUS, as a food preparation).

HQ H280419, dated December 7, 2020, also classified a rice protein powder in subheading 2106.10.00, HTSUS. The rice protein powder of HQ H280419 was enzymatically extracted from multiple layers of whole grain brown rice. The product was sold as a bulk ingredient to be used as a protein-based nutritional supplement in food or feed products, as well as in beverages, infant formula, nutraceuticals and nutritional products, small animal nutrition, weight management products, and cosmetic products. CBP determined that the rice protein powder subject in HQ H280419 was similar to the product of HQ 950915 as they were both the result of extensive production processing and additional advanced refinement, as well as used as a protein source or nutritional protein supplement in food preparations and beverages. CBP further noted that the importer marketed and sold the rice protein powder as a protein source, protein supplement and nutritional supplement for consumption.

We find that the subject rice protein powder is substantially similar to the rice protein powders of HQ 950915 and HQ H280419. In each of these cases, the protein powder was processed from a single rice source and used as a food preparation designed to supplement the protein content in various consumption applications. Likewise, the subject rice protein powder is the result of extensive production processing and is incorporated as an ingredient in various food applications for human consumption. Additionally, the subject rice protein powder is marketed for applications such as bars, chips, protein blends, RTD beverages, and dips. Accordingly, based on the composition of the product, the manner of production, how the product is marketed, and its ultimate use in food and beverage applications, we find that heading 2106, HTSUS, encompasses the subject rice protein powder. Specifically, the rice protein powder is classified under subheading 2106.10.00, HTSUS, which provides for "Food preparations not elsewhere specified or included: Protein concentrates and textured protein substances."

HOLDING:

By application of GRI 1, we find that the rice protein powder at issue is classified under heading 2106, HTSUS, and specifically in subheading 2106.10.00 HTSUS, which provides for "Food preparations not elsewhere specified or included: Protein concentrates and textured protein substances." The 2023 column one, general rate of duty is 6.4% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N308405, dated January 9, 2020, is hereby modified.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A STRAPRAIL TENSIONING SYSTEM AND A ROPERAIL TENSIONING SYSTEM

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

ACTION: Notice of proposed modification of one ruling letter, and proposed revocation of treatment relating to the tariff classification of a StrapRail Tensioning System and a RopeRail Tensioning System.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke a ruling letter concerning the tariff classification of a StrapRail Tensioning System and a RopeRail Tensioning System under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before October 6, 2023.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Monique Moore, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Monique Moore at (202) 325–1826.

FOR FURTHER INFORMATION CONTACT: Nataline Viray-Fung, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at nataline.viray-fung@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify a ruling letter pertaining to the tariff classification of a StrapRail Tensioning System and a RopeRail Tensioning System. Although in this notice, CBP is specifically referring to NY N246928, dated November 14, 2013 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N246928, CBP classified a StrapRail Tensioning System and a RopeRail Tensioning System in heading 8425, HTSUS, specifically in subheading 8425.39.01, HTSUS, which provides for "Pulley tackle and hoists other than skip hoists, winches and capstans; jacks: Winches and capstans: Other" by application of General Rules of Interpretation (GRIs) 1, 3(c) and 6. CBP has reviewed NY N246928

and has determined the ruling letter to be in error. It is now CBP's position that the StrapRail Tensioning System is properly classified in heading 8479, HTSUS, specifically in subheading 8479.89.95, HTSUS which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other." Both the StrapRail and RopeRail products are classified pursuant to GRIs 1, 3(b) and 6.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N246928 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H323869, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

GREGORY CONNOR
for
YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N246928
November 14, 2013
CLA-2–84:OT:RR:NC:1:104
CATEGORY: Classification
TARIFF NO.: 8425.39.0100

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
173 WEST SERVICE ROAD
CHAMPLAIN, NY 12919

RE: The tariff classification of a StrapRail and RopeGuard Guardrail System from Canada

DEAR MR. KAVANAUGH:

In your letter dated September 25, 2013, on behalf of your client Superchute Ltd, you requested a tariff classification ruling.

The imported merchandise consists of a StrapRail Tensioning system and a RopeRail Tensioning system. TheStrapRail system is a portable web strap guardrail system imported as a complete unassembled article. The main purpose of the system is to prevent workers and objects from falling from elevated building levels. The system consists of three tensioned polyester straps that are anchored and tensioned by a ratchet mechanism and attached to either an aluminum post or to the building. The steel ratchet is a 4" ratchet used to tension the StrapRail system only. The ratchet is manually activated by cranking the gear and is left in place once the tension is applied. The system also contains strap buckles which are drop forged steel, steel quicklinks, steel posts, concrete anchor bolts, stainless steel labels for the posts, aluminum anti-deflection posts, nuts and bolts, washers, rivnuts, semitubular rivets, pop rivets, aluminum and plastic column posts, a polyester mesh netting and zip ties. The ratchets and buckles are sewn to the straps and shipped already attached to the straps. Depending on the customer's preference, the StrapRail components can be shipped in a supplied zippered nylon duffel bag. The StrapRail system also contains a PVC post bag with a zipper to fit the posts, and a polyester pink pouch with a Velcro closure to fit the surplus installed strap.

The RopeRail system is also imported as a complete unassembled article. It contains 2 steel anchor posts, 4 intermediate steel posts, a steel wire rope assembly, a lever operated manual winch and a roll of polyethylene mesh netting. The difference between the RopeRail Tensioning system and the StrapRail Tensioning system is that the RopeRail Tensioning system uses a cam winch instead of a ratchet to tension the RopeRail wire. This is because the RopeRail is designed for longer spans. The cam winch is able to accept an infinite wire length and tension the slack out of the wire until the wire is stretched. Ratchets have a very small capacity drum and would quickly fill up before the wire is fully extended. The winch is manually activated by hand pumping the winch lever with the supplied pipe handle. The winch is left in place once the tension is applied. A RopeRail Wire Rope assembly consists of the pressed fittings such as swages and teardrop thimbles found on the end of the wire rope.

General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), states in part that for legal purposes, classification

shall be determined according to the terms of the headings, any relative section or chapter notes and, unless otherwise required, according to the remaining GRI's taken in order. Goods that are, prima facie, classifiable under two or more headings, are classifiable in accordance with GRI 3, HTSUS, i.e., (a) specific description, (b) essential character and (c) heading which occurs last in numerical order. GRI 3(a) states in part that when two or more headings each refer to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific, even if one heading gives a more precise description of the goods. In such cases, the classification of the set is to be determined by GRI 3(b) or GRI 3(c) taken in the appropriate order in which they are set out in GRI 3.

The instant tool kit consists of at least two different articles that are, prima facie, classifiable in different headings. It consists of articles put up together to carry out a specific activity (i.e., preventing falling from elevated building levels). Finally the articles are put up in a manner suitable for sale directly to users without repacking. Therefore, the kit in question is within the term "goods put up in sets for retail sale." GRI 3(b) states in part that goods put up in sets for retail sale, which cannot be classified by reference to GRI 3(a), are to be classified as if they consisted of the component which gives them their essential character.

Inasmuch as no essential character can be determined, GRI 3(b) does not apply. GRI 3(c) states that, if neither GRI 3(a) nor GRI 3(b) applies, merchandise shall be classified in the heading which occurs last in numerical among those equally meriting consideration. In this instance, the StrapRail and the RopeGuard Guardrail System is classified in the heading which occurs last in numerical among those equally meriting consideration.

The applicable subheading for the StrapRail and RopeGuard Guardrail System will be 8425.39.0100, HTSUS, which provides for "Pulley tackle and hoists other than skip hoists; winches and capstans; jacks: Winches; capstans: Other". The rate of duty will be free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at http://www.usitc.gov/tata/hts/.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia O'Donnell at (646) 733–3011.

Sincerely,

GWENN KLEIN KIRSCHNER
Acting Director
National Commodity Specialist Division

ATTACHMENT B

HQ H323869
OT:RR:CTF:EMAIN H323869 NVF
CATEGORY: Classification
TARIFF NO.: 8425.39.01, 8479.89.95

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
173 WEST SERVICE ROAD
CHAMPLAIN, NY 12919

RE: Modification of NY N246928; Classification of StrapRail and RopeRail Systems

DEAR MR. KAVANAUGH:

On November 14, 2013, we issued binding ruling letter New York ("NY") N264928 to your client, Superchute Ltd. We have since reviewed NY N264928 and are modifying it in accordance with the reasoning below.

FACTS:

The StrapRail is described in NY N264928 as a portable web strap guardrail system imported as a complete unassembled article. The main purpose of the system is to prevent workers and objects from falling from elevated building levels. The system consists of three polyester straps that are anchored and tensioned by a ratchet mechanism and attached to either an aluminum post or to the building. The steel ratchet is a 4" ratchet used to tension the StrapRail system only. The ratchet is manually activated by cranking the gear and is left in place once the tension is applied. The system also contains strap buckles of drop forged steel, steel quick-links, steel posts, concrete anchor bolts, stainless steel labels for the posts, aluminum anti-deflection posts, nuts and bolts, washers, rivnuts, semi-tubular rivets, pop rivets, aluminum and plastic column posts, a polyester mesh netting and zip ties. The ratchets and buckles are sewn to the straps in their condition as imported. Depending on the customer's preference, the StrapRail components can be shipped in a supplied zippered nylon duffel bag. The StrapRail system also contains a PVC post bag with a zipper to fit the posts, and a polyester pink pouch with a Velcro closure to fit the surplus installed strap.

The RopeRail system is also imported as a complete unassembled article. It contains 2 steel anchor posts, 4 intermediate steel posts, a steel wire rope assembly, a lever operated manual winch and a roll of polyethylene mesh netting. The difference between the RopeRail Tensioning system and the StrapRail Tensioning system is that the RopeRail Tensioning system uses a cam winch instead of a ratchet to tension the RopeRail wire. This is because the RopeRail is designed for longer spans. The cam winch can accept an infinite wire length and tension the slack out of the wire until the wire is stretched. Ratchets have a very small capacity drum and would quickly fill up before the wire is fully extended. The winch is manually activated by hand pumping the winch lever with the supplied pipe handle. The winch is left in place once the tension is applied. A RopeRail assembly consists of the pressed fittings such as swages and teardrop thimbles found on the end of the wire rope.

ISSUE:

Whether the StrapRail and RopeRail systems are classified under heading 8425, HTSUS as winches or under heading 8479, HTSUS as a mechanical appliance with individual functions not specified elsewhere.

LAW AND ANALYSIS:

The HTSUS provisions under consideration are as follows:

8425 Pulley tackle and hoists other than skip hoists; winches and capstans; jacks.

8479 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof.

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

GRI 3(a) states that the heading that provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings refer to only part of the items in a composite good or set, those headings are to be regarded as equally specific in relation to the goods, even if one of the gives a more complete or precise description of the good. As such, they are regarded as equally specific and classification of the composite good or set is to be determined by GRI 3(b) or GRI 3(c).

GRI 3(b) states that composite goods or sets which cannot be classified by reference to GRI 3(a) are to be classified as if they consisted of the component that gives them their essential character. GRI 3(c) states that if goods cannot be classified pursuant to GRI 3(a) or (b), then they are classified under the heading which is last in numerical order among the headings which equally merit consideration.

In this case, the StrapRail and the RopeRail are both sets and therefore are classified pursuant to GRI 3(b) or 3(c). The StrapRail and the RopeRail are used as temporary railings on construction sites to prevent workers and objects from falling from open building levels. As such, the railing, regardless of material, must be appropriately tensioned in order to support the weight of a human being or objects used for or in construction. We find that the devices used to tension the railing impart the essential character of the instant sets. Specifically, the ratchet used to tension the webbing in the StrapRail and the winch used to tension the cable in the RopeRail impart the essential character of the sets.

We observe that there is a narrow category of machinery that utilizes a separate, winch type hand crank or electric drum to tension straps for various purposes. *See* HQ H031587 (Apr. 1, 2011). For example, in HQ H031587, we classified a device that mounts underneath the bed of a truck and consists of a steel plate and a hand-operated ratchet drum over which webbing or cable is wound under heading 8425, HTSUS, as a winch. This comported with the common meaning of the term "winch", noting in particular the following:

> The Oxford English Dictionary defines "winch" as "a hoisting or hauling apparatus consisting essentially of a horizontal drum round which a rope

> passes and a crank by which it is turned." Webster's College Dictionary defines a "winch" as "1. a crank with a handle for transmitting motion, as to a grindstone. 2. a machine for hoisting, lowering, or hauling, consisting of a drum or cylinder turned by a crank or motor; a rope or cable tied to the load is wound on the drum or cylinder." The Web Sling & Tie Down Association, a trade group, defines a winch as "a tensioning device, which is mounted directly to a vehicle for tensioning synthetic web tie downs to secure cargo." *See* http://www.wstda.com/ products/ wstda_winches_t-3.pdf.

The winch used in the RopeRail is similarly an independently housed tensioning device that operates on the same principles as the winch at issue in HQ H031587. It is therefore properly classified under heading 8425, HTSUS. Because the winch imparts the essential character of the RopeRail set, the RopeRail is classified in heading 8425, HTSUS as a winch.

By contrast, rachets used to tension straps are not "winches" because they are not independently housed devices that consist of a drum or cylinder turned by a crank or motor. As such, they are not covered by heading 8425, HTSUS, and are properly classified under heading 8479, HTSUS, as machines having individual functions not specified elsewhere. HQ 089411 (June 20, 1991). Ratchets classified in heading 8479, HTSUS, contain a gear and pawl mechanism that holds the straps firmly in place and has a lever that provides the user with a mechanical advantage to tighten the straps beyond what could be achieved by merely pulling on them. The ratchets used in the StrapRail are substantially similar to the ratchets we have previously classified in heading 8479, HTSUS. Because the essential character of the StrapRail set is imparted by the ratchet, the StrapRail is classified in heading 8479, HTSUS as machines having individual functions not specified elsewhere.

In light of the foregoing, the StrapRail is classified under heading 8479, HTSUS as a machine having individual functions not specified or included elsewhere, and the RopeRail is classified under heading 8425, HTSUS as a winch.

HOLDING:

By application of GRIs 1, 3(b), and 6, the StrapRail system is classified under subheading 8479.89.95, HTSUS which provides for: Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other. The column one rate of duty is 2.5 percent ad valorem.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 8479.89.95, HTSUS, unless specifically excluded, are subject to an additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, *i.e.,* 9903.88.03, in addition to subheading 8479.89.95, HTSUS, listed above.

By application of GRIs 1, 3(b), and 6, the RopeRail system is classified under subheading 8425.39.01, HTSUS which provides for: Pulley tackle and hoists other than skip hoists; winches and capstans; jacks: Winches; capstans: Other." The column one, general rate of duty is free.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 8425.39.01, HTSUS, unless specifically excluded, are subject to an additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, *i.e.,* 9903.88.01, in addition to subheading 8425.39.01, HTSUS, listed above.

The HTSUS is subject to periodic amendment, so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, including information on exclusions and their effective dates, you may refer to the relevant parts of the USTR and CBP websites, which are available at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions* and *https://www.cbp.gov/trade/remedies/301-certain-products-china* respectively.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at https://www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N246928, dated November 14, 2013, is MODIFIED.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED MODIFICATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE APPLICABILITY OF SUBHEADING 9817.00.96, HTSUS TO CERTAIN REACHING AIDS

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

ACTION: Notice of proposed modification of two ruling letters, and proposed revocation of treatment relating to the applicability of subheading 9817.00.96, Harmonized Tariff Schedule of the United States (HTSUS) to certain reaching aids.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify two ruling letters concerning the applicability of subheading 9817.00.96, HTSUS, to certain reaching aids. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before October 6, 2023.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Monique Moore, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Monique Moore at (202) 325–1826.

FOR FURTHER INFORMATION CONTACT: Uzma S. Bishop-Burney, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–3782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify two ruling letters pertaining to applicability of subheading 9817.00.96, HTSUS to certain reaching aids. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") 813853, dated September 8, 1995 (Attachment A), and Headquarters Ruling Letter ("HQ") 556449, dated May 5, 1992 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

We reviewed two rulings that classified certain reaching aids as articles for the handicapped in subheading 9817.00.96, HTSUS, and find them to be incorrect. These two rulings (see Attachments A and B) should be modified in accordance with *Sigvaris, Inc. v. United States,* 889 F.3d 1308 (Fed. Cir. 2018).

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify the affected two rulings, and any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H327276 and HQ H330680, set forth as Attachments C and D to this notice. Addition-

ally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

For

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

NY 813853
September 8, 1995
CLA-2–76:S:N:N3:119 813853
CATEGORY: Classification
TARIFF NO.: 7616.90.5080; 9817.00.96

MS. MARY E. WRIGHT
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & WRIGHT
45 SCHOOL STREET, SECOND FLOOR
BOSTON, MA 02108

RE: The tariff classification of Reaching Aids from the United Kingdom

DEAR MS. WRIGHT:

In your letter dated August 16, 1995, you requested a tariff classification ruling.

The articles to be imported are various types of "reachers" or "reaching aids" which are used for retrieving objects beyond an individual's reach or for picking articles off the floor. The reacher basically consists of a long aluminum rod with a handle and trigger mechanism at one end and a spring operated gripping jaw at the other. The reachers appear to be designed primarily for the use of individuals whose ability to move or bend to reach needed objects is substantially and chronically impaired.

The applicable subheading for the reaching aids will be 7616.90.5080, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of aluminum, other, other, other. The rate of duty will be 5.1 percent.

The reaching aids described above are eligible for free entry under the provision for articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons... other, in subheading 9817.00.96, HTS. All applicable entry requirements must be met including the filing of form ITA-362P.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

HQ 556449
May 5, 1992
CLA-2 CO:R:C:S 556449 SER
CATEGORY: Classification

AREA DIRECTOR OF CUSTOMS
NEW YORK SEAPORT
ROOM 423
6 WORLD TRADE CENTER
NEW YORK, NY 10048

RE: Protest and Application for Further Review No. 1001–91–001636; Nairobi Protocol; specially designed or adapted for the handicapped

DEAR SIR:

The above-referenced protest concerns your classification and duty assessment on various household articles imported from Sweden by Lumex Inc. Protestant claims that the articles at issue are eligible for duty-free treatment under subheading 9817.00.96, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), a claim which you have denied.

FACTS:

The following is a brief description of each of the numerous articles which are subject to this protest:

1. A clear plastic two-handled mug which has a relatively wide base which is stated to provide a low center of gravity to prevent tipping. This mug also generally comes with a lid which has a small funnel which prevents spillage when liquids from the mug are consumed. In a pre-import review, Customs officials obtained samples of this mug. The marking on the packaging of the mug and lid as imported were in Swedish and stated that the product was for use by children. After importation, the articles are repackaged to indicate that they are for use by handicapped individuals. Customs classified the mugs and lids in subheading 3924.10.20, HTSUSA.

2. A plate made of heat-proof plastic with an anti-slip base. The plate has a raised edge which is stated to allow "low entry and provides a lip to push food against."

3. A potato peeler with either a suction-cupped base or a screw-type counter clamp. By attaching the peeler to a countertop, an individual is able to peel vegetables with only one hand by passing the vegetable over the peeler.

4. A nail brush with a suction cup to secure the brush to a surface for one-handed operation.

5. A nail file which is stated to feature a lightweight, plastic handle for cleaning cuticles and under the nails.

6. A pen stated to be designed for those with diminished strength and/or mobility in hands and arms. The pens are wider than the traditional ballpoint pens and have a groove to form to the hand.

7. Kitchen knives with various edges, e.g., serrated, with the principle design consisting of a handle grip which is above the blade portion. It is stated that this design allows less strain on shoulders and hands when cutting.

8. An angled container opener which is used to open milk and juice containers. One edge is used to release the container folds, and another edge is used to pull the container open so that the juice or milk may be poured. The accompanying catalog stated that the container opener is specially designed

"for people with impaired hand usage; but anyone will find opening a container much easier with this efficient product."

9. Various forms of forks, spoons, and knives all of which are stated to have a design function to benefit the handicapped. One form is stated to be maneuverable and lightweight with "proper" handle angles for distribution of pressure when holding the cutlery like a pen. Another form of cutlery is combination fork/knives or spoon/knives whereby the fork or spoon also have an extended "blade" on one side. They are stated to be ideal for one-handed usage. Another form is weighted style cutlery with built-up handles which are stated to provide proper balance for users with limited grip strength. In addition, the heads of the spoons and forks are bent where the heads meet the handle to provide easier usage. Another style is labeled as "RA" cutlery which is stated to be designed for individuals with rheumatoid arthritis. One final form of cutlery is lightweight style cutlery, which includes heads bent at 45 degree and 90 degree angles.

10. Scissors with a nylon spring connecting the handles so that the handles open after cutting. This is stated to be for those individuals who have difficulty pulling scissor blades apart after every cut.

11. Brushes with extenders made of nylon with PVC handles used for bathing. The extenders allow persons to cleanse themselves without bending or stretching.

12. A plastic mixing bowl equipped with handles on the side and an anti-slip base.

13. Reachers and turners of various designs for use in retrieving objects beyond an individual's reach or for picking up items off the floor. On one end is a handle with control mechanisms, and on the other are "jaws" to grip items. They are stated to be for safety purposes so individuals with limited mobility do not attempt to stand on chairs to reach items or for those who find it painful to bend down to the floor to retrieve items.

14. Toilet support arms of various styles which are used by handicapped individuals who need assistance in accessing a toilet. The support arms are attached to the wall next to a toilet and can either be raised or can swivel out of the way for egress and ingress, depending on the style used.

15. A "Kommod" bedside toilet which is intended to be placed at bedside for those who would otherwise have difficulty in getting to the toilet. It is supplied with a "pot" and tight-sealing lid. The pot is easily removed for emptying. It also has arm rests which can be raised to facilitate transfer from bed to toilet.

16. Toilet seat raisers which provide a higher seat level on toilets so that a handicapped individual does not need to bend as low to utilize the toilet. It attaches to an existing regular toilet seat and the angle of the seat can be adjusted. The toilet seat raisers are designed for individuals with diminished mobility in hips and knees.

17. Shower stools which are utilized by those individuals who cannot stand in the shower. They are offered in varying styles and sizes.

18. A Strumpalatt or stocking aid which is used by handicapped individuals who have difficulty in putting on stockings or socks because of limited mobility in hips and/or knee joints, or impaired stability, or by those individuals with diminished use of arms and hands and persons with only one hand. The stocking aids consist of a plastic board approximately the width of a human foot with a handle at one end. The lower portion of the plastic piece has a fabric cone which is used to guide the foot into the stocking.

19. Grab rails which are mounted to walls in and around showers and bath tubs. They are utilized for stabilization when entering or leaving the showers or bath tubs. The individual rails vary in size and composition—some are chrome-plated brass while others are Rilsan-coated steel.

ISSUE:

Whether the various articles are "specially designed or adapted" for the handicapped within the meaning of the Nairobi Protocol, and, therefore, eligible for duty-free treatment under subheading 9817.00.96, HTSUSA.

LAW AND ANALYSIS:

The Nairobi Protocol to the Agreement on the Importation of Educational, Scientific, and Cultural Materials Act of 1982, established the duty-free treatment for certain articles for the handicapped. Presidential Proclamation 5978 and Section 1121 of the Omnibus Trade and Competitiveness Act of 1988, provided for the implementation of the Nairobi Protocol into subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUSA. These tariff provisions specifically state that "[a]rticles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons" are eligible for duty-free treatment.

U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUSA, states that, "the term 'blind or other physically or mentally handicapped persons' includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working."

U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUSA, which establishes limits on classification of products in these subheadings, states as follows:

> (b) Subheadings 9817.00.92, 9817.00.94 and 9817.00.96 do not cover—
>
> (i) articles for acute or transient disability;
>
> (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled;
>
> (iii) therapeutic and diagnostic articles; or
>
> (iv) medicine or drugs.

The primary issue regarding the articles subject to this protest is whether they are "specially designed or adapted" for the use or benefit of the handicapped within the meaning of Nairobi Protocol. Although the legislative history of the Nairobi Protocol discusses the concerns of Congress that the design, modification or adaption of an article must be significant so as to clearly render the article for use by handicapped individuals, no specific definition of these terms was established by Congress. See, Senate Report (Finance Committee) No. 97–564, September 21, 1982). See also, Headquarters Ruling Letter (HRL) 951004 dated March 3, 1992. Since it is difficult to establish a clear definition of what is "specially designed or adapted," various factors must be utilized on a case-by-case basis to determine whether a given article is "specially designed or adapted" within the meaning of this statute.

The first factor to be considered is the physical properties of the article itself, i.e., whether the article is easily distinguishable by properties of the design and the corresponding use specific to this unique design, from articles useful to non-handicapped individuals. If an article is dedicated to a sole use

for the handicapped, e.g., pacemakers or hearing aids, then this is conclusive evidence that the articles are specially designed or adapted for the handicapped for purposes of the Nairobi Protocol. Also, design factors such as the utilization of angles in articles normally of straight design, as is found in some of the cutlery at issue, is a common design associated with articles for the handicapped. The physics of leverage provided by this design enables handicapped individuals to compensate for weakness and lack of dexterity. However, not all articles which have a bend in their design are to be considered articles specially designed or adapted for the handicapped. The bathing brushes at issue which have a bend would be considered to be a common design often used by the general public. Thus, the "specific design" factors must be considered in conjunction with other relevant factors which are discussed below.

In Headquarters Ruling Letter (HRL) 074191 dated December 13, 1984, we also found the following factors relevant to the question of whether or not an article is specifically designed or adapted for the use or benefit of the handicapped: Whether any characteristics are present that create a substantial probability of use by the chronically handicapped, and whether the article is easily distinguishable from articles useful to the general public or whether use of the article by the general public is so improbable that such use would be fugitive. These factors will be collectively referred to hereafter as the "probability of general public use" factor.

In consideration of the "probability of general public use" factor we find, for example, that the submitted sample of the two-handed mug is very commonly used by children. In addition, the design, a low center of gravity and a corresponding top which helps to reduce spillage, is very common in traveling mugs used by the general public. Accordingly, duty-free treatment as articles specially designed for the handicapped is precluded. Similarly, the pen and nail files at issue with their wider design and lightweight properties are also very common in the general public. On the other hand, the likelihood of the general public utilizing the bedside toilet, or the dressing aids at issue is remote. Thus, there is a strong indication that these articles are specially designed or adapted for the handicapped.

The "probability of general public use" factor also includes an evaluation of convenience. For example, the use of the fork with a clamp, whereby individuals place food needed to be cut on the end of the fork and then clamp the fork to the side of a plate for one-handed cutting, would be very inconvenient for non-handicapped individuals. Furthermore, the potato peelers, which are either mounted on a platform with suction cups or to a clamp to assist in one handed peeling, also would not be very convenient to the general public, thereby supporting the conclusion that this article is specially designed or adapted for the handicapped.

Customs also has considered other factors for determining whether an article is "specially designed or adapted" for the handicapped: Whether articles are imported by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; Whether the articles are sold in specialty stores which serve handicapped individuals; and Whether the condition of the articles at the time of importation indicate that these articles are for the handicapped. Each of these factors still must be weighed against other factors discussed herein. See, Headquarters Ruling Letter (HRL) 556135 dated September 10, 1991 and HRL 087625 dated November 1, 1990.

Therefore, although Protestant and its supplier are recognized as distributors of articles for the handicapped, a finding of this factor, alone, is not dispositive. For example, the mug and top which are imported by the Protestant are clearly not articles specially designed or adapted for the use or benefit of the handicapped. In their condition as imported they are packaged and labeled, in Swedish and Norwegian, as a "childs mug", which coincides with a cartoon figure of a young girl also on the label. Furthermore, the plastic mixing bowl at issue which is claimed to be for the handicapped, is clearly not the type of article to be associated with a specialty store, nor does it have any real design characteristics which would distinguish it as an article specially designed for the handicapped.

HOLDING:

Based on the application of the factors stated herein, we find as follows.

The clear plastic two-handed mug and lid, the nail file with the lightweight handle, the pens with a wider base, the angled container opener, the cutlery which does not incorporate a bending design of the heads, the scissors with springs for opening, the brushes with extenders for bathing, and the plastic mixing bowl are not articles specially designed or adapted for the handicapped, and, therefore, are not eligible for duty-free treatment under subheading 9817.00.96, HTSUSA.

However, the "Kommod" bedside toilet, the plate with a raised edge, the potato peelers and nail brush with suction cups or clamps, the kitchen knives with a design which includes a bend, the cutlery with bending designs, the reachers and turners, the toilet support arms, the toiler seat raisers, the grab rails, the shower stools, and the "Strumpalatt" used for dressing are considered to be articles specially designed or adapted for the handicapped, and, therefore, eligible for duty-free treatment under subheading 9817.00.96, HTSUSA.

Therefore, in accordance with this decision, you should grant in part and deny in part, this protest. A copy of this ruling should be attached to Customs Form 19 and sent to the protestant.

Sincerely,

JOHN DURANT,
Director
Commercial Rulings Division

cc: Regional Commissioner of Customs
c/o Protest and Control Section
Room 762
6 World Trade Center
New York, NY 10048–0945

HQ H327276

2023

OT:RR:CTF:VS HQ H327276 UBB

CATEGORY: Classification

HAROLD M. GRUNFELD
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & WRIGHT
599 LEXINGTON AVE, FL. 36
NEW YORK, NY 10022

RE: Articles for the handicapped; Subheading 9817.00.96; Reaching aids

DEAR MR. GRUNFELD,

This is in reference to one ruling issued to your law firm on behalf of an unnamed client, concerning the tariff classification of various reaching aids under the Harmonized Tariff Schedule of the United States ("HTSUS"). Specifically, in New York Ruling Letter ("NY") 813853, dated September 8, 1995, the merchandise was determined to be eligible for subheading 9817.00.96, HTSUS, treatment as an article for the handicapped.

We have reviewed the ruling and find it to be in error regarding the applicability of subheading 9817.00.96, HTSUS. For the reasons set forth below, we are modifying the ruling which approved the applicability of heading 9817, which provides for "articles for the handicapped" to various reaching aids.

FACTS:

NY 813853 addresses various types of reachers or reaching aids used for retrieving objects beyond an individual's reach or for picking articles off the floor. The ruling describes the reacher, noting that it "basically consists of a long aluminum rod with a handle and trigger mechanism at one end and a spring operated gripping jaw at the other." The ruling also states that the reachers "appear to be designed primarily for the use of individuals whose ability to move or bend to reach needed objects is substantially and chronically impaired." The ruling contains no other information regarding the reachers or reaching aids and does not provide a detailed legal analysis regarding the applicability of 9817.00.96, HTSUS to the merchandise.

ISSUE:

Whether the reaching aids are eligible for duty-free treatment under subheading 9817.00.96, HTSUS, as "articles specially designed or adapted for the handicapped."

LAW AND ANALYSIS:

The Nairobi Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials of 1982, Pub. L. No. 97–446, 96 Stat. 2329, 2346 (1983) established the duty-free treatment for certain articles for the handicapped. Presidential Proclamation 5978 and Section 1121 of the Omnibus Trade and Competitiveness Act of 1988, provided for the implementation of the Nairobi Protocol into subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS.

Subheading 9817.00.96, HTSUS, covers: "Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally

handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles . . . Other." In *Sigvaris, Inc. v. United States*, 227 F. Supp 3d 1327, 1336 (CIT 2017), *aff'd*, 899 F.3d 1308 (Fed. Cir. 2018), the U.S. Court of International Trade ("CIT") explained that:

> The term "specially" is synonymous with "particularly," which is defined as "to an extent greater than in other cases or towards others." Webster's Third New International Dictionary 1647, 2186 (unabr. 2002). The dictionary definition for "designed" is something that is "done, performed, or made with purpose and intent often despite an appearance of being accidental, spontaneous, or natural." Webster's Third New International Dictionary 612 (unabr. 2002).

Subheading 9817.00.96, HTSUS, excludes "(i) articles for acute or transient disability; (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (iii) therapeutic and diagnostic articles; or, (iv) medicine or drugs." U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS. Thus, eligibility within subheading 9817.00.96, HTSUS, depends on whether the article is "specially designed or adapted for the use or benefit of the blind or physically and mentally handicapped persons," and whether it falls within any of the enumerated exclusions under U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS.

The term "blind or other physically or mentally handicapped persons" includes "any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working." U.S. Note 4(a), Subchapter XVII, Chapter 98, HTSUS. While the HTSUS does not establish a clear definition of substantial limitation, in *Sigvaris*, 227 F. Supp 3d at 1335, the CIT explained that "[t]he inclusion of the word 'substantially' denotes that the limitation must be 'considerable in amount' or 'to a large degree.'"

We must first evaluate "for whose, if anyone's, use and benefit is the article specially designed," and then, whether "those persons [are] physically handicapped []." *Sigvaris*, 899 F.3d at 1314. In other words, we must consider whether such persons are suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities.

The Court of Appeals for the Federal Circuit ("CAFC") clarified that to be "specially designed," the merchandise "must be intended for the use or benefit of a specific class of persons to an extent greater than for the use or benefit of others. This definition of 'specially designed' is consistent with factors that Customs uses in discerning for whose use and benefit a product is 'specially designed" ... we adopt them in our analysis ...." *Id.* at 1314–15. In *Danze, Inc. v. United States*, 319 F. Supp. 3d 1312, 1326 n.22 (CIT 2018), the CIT held that ADA compliance alone was insufficient to show that an item was "specifically designed or adapted" for the handicapped under subheading 9817.00.96, HTSUS.

Thus, to determine whether the reachers or reaching aids in question are "specially designed" for the use or benefit of a class of persons to an extent greater than for others, we must examine the following five factors used by U.S. Customs and Border Protection ("CBP") and adopted by the CAFC in *Sigvaris*, 899 F.3d at 1314–15: (1) physical properties of the article itself (*e.g.*, whether the article is easily distinguishable in design, form and use from

articles useful to non-handicapped persons); (2) presence of any characteristics that create a substantial probability of use by the chronically handicapped, so that the article is easily distinguishable from articles useful to the general public and any use thereof by the general public is so improbable that it would be fugitive; (3) importation by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; (4) sale in specialty stores that serve handicapped individuals; and (5) indication at the time of importation that the article is for the handicapped. *See also* T.D. 92–77 (26 Cust. B. 240 (1992)).

The first two factors to consider in determining whether an article is "specially designed" are the physical properties of the article and any characteristics of the article that easily distinguish it from articles useful to the general public. In this case, the reachers described in NY 813853 do not possess any features that are distinguishable from features found in reachers available to the general public. We have found reachers with identical or similar features described as useful for picking up items that are too far to reach, for picking up trash, litter and garbage, for gathering dangerous items such as shards of glass, for reaching tight or hard to reach spots, for use for the elderly, in nursing homes, and for use for the physically impaired. There is no particular distinction between reachers that are marketed to the general public (including the elderly) for ease with daily or specialized activities and reachers that are specially designed for individuals suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities.

The third and fourth factors to consider in determining whether an article is "specially designed" are whether it is imported by manufacturers or distributors recognized to be involved in this class or kind of articles for the handicapped and whether it is sold in specialty stores that serve handicapped individuals. Reachers that are substantially similar to the reachers described in NY 813853 proliferate at e-commerce websites that serve the general public and these websites market the reachers both to the general public as well as to individuals who may be handicapped. NY 813853 does not identify the importer on whose behalf the ruling was requested.

The fifth and final factor to consider is whether there was an indication at the time of importation that the article is for the handicapped. NY 813853 was an advance ruling request and did not address an importation that had taken place, therefore the fifth factor doesn't apply in this case.

Finally, subheading 9817.00.96, HTSUS, does not cover articles for acute or transient disability. *See* U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS. NY 813853 does not define or describe the specific handicap or disability that would necessitate the use of the subject merchandise, and makes only a conclusory statement that the reachers are designed primarily for the use of individuals whose ability to move or bend to reach needed objects is substantially and chronically impaired. There is no doubt that there are chronic handicap or disabilities that would result in dexterity or mobility issues of this type, however, there are also transient or acute conditions that would do the same (e.g. surgery, an accident), as well as age related limitations in mobility and dexterity as well. As we have noted above, reachers and reaching aids that are substantially similar to the ones described in NY 813853 are now routinely marketed to and available for purchase by the general public for precisely this type of use.

Thus, the reachers in NY 813853 do not have any features which are "specifically designed or adapted" for the handicapped. Rather, the general public would likely use the reachers for the many uses described above. Although the importer may claim the reachers are for persons who are chronically handicapped, we do not believe the reachers have any significant adaptations that would benefit the handicapped community. While reachers and reaching aids may have been directed at chronically handicapped individuals at one point in time, they now appear to be common to members of the general public who may benefit from the convenience of using a reaching tool, to reach items that are places high and beyond reach or in tight spaces, to pick up trash and litter or dangerous items such as shards of glass, as well as by members of the general public who may have impaired mobility as a result of transient injury or advanced age, but who are not chronically handicapped as set forth in 9817.00.96, HTSUS, *Sigvaris,* or the *Nairobi Protocol, Annex E to the Florence Agreement*, found in T.D. 92–77, *supra*.

Accordingly, the reachers and reaching aids are not adaptive articles of subheading 9817.00.96, HTSUS.

HOLDING:

The reachers and reaching aids identified in NY 813853 are ineligible for subheading 9817.00.96, HTSUS, which provides for as "articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons . . . other."

EFFECT ON OTHER RULINGS:

NY 813853, dated September 8, 1995, is hereby modified to reflect that the reachers and reaching aids identified therein are ineligible for subheading 9817.00.96, HTSUS.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial Trade and Facilitation

HQ H330680

2023

OT:RR:CTF:VS HQ H330680 UBB

CATEGORY: Classification

KENNETH SPETT, PRESIDENT AND CEO
GRAHAM-FIELD HEALTH PRODUCTS
ONE GRAHAM-FIELD WAY
ATLANTA, GA 30340–3140

RE: Articles for the handicapped; Subheading 9817.00.96; Reaching aids

DEAR MR. SPETT,

This is in reference to one Protest and Application for Further Review that concerned certain merchandise imported by Lumex, Inc. The ruling concerned the tariff classification of, among other items, various reaching aids under the Harmonized Tariff Schedule of the United States ("HTSUS"). Specifically, in Headquarters Ruling Letter ("HQ") 556449, dated May 5, 1992, the merchandise was determined to be eligible for subheading 9817.00.96, HTSUS treatment as an article for the handicapped.

We have reviewed the ruling and find it to be in error regarding the applicability of subheading 9817.00.96, HTSUS to the reaching aids. For the reasons set forth below, we are modifying the ruling which approved the applicability of heading 9817, which provides for "articles for the handicapped" to various reaching aids.

FACTS:

In HQ 556449, Lumex, Inc. ("Lumex" or "Protestant")[1] claimed that a number of articles imported from Sweden were eligible for duty-free treatment under subheading 9817.00.96, HTSUS. Among the articles subject to the protest were reachers and turners of various designs for use in retrieving objects beyond an individual's reach or for picking up items off the floor. The ruling describes the items as having a handle on one end with control mechanisms and "jaws" to grip items on the other end. According to the ruling, the protestant stated the reachers to be for safety purposes so individuals with limited mobility do not attempt to stand on chairs to reach items or for those who find it painful to bend down to the floor to retrieve items. The ruling set forth the factors relevant to whether an article is specifically designed or adapted for the use or benefit of the handicapped, however the ruling did not analyze the facts of the specific merchandise (reachers and turners) against those factors, with the exception of noting that although the Protestant and its supplier were recognized as distributors of articles for the handicapped, this factor alone was not dispositive. The ruling then provided, without additional analysis, that the reachers and turners were considered to be articles specifically designed or adapted for the handicapped.

[1] HQ 556449, dated May 5, 1992, was a response to a Protest and Application for Further Review (AFR) concerning various household articles imported from Sweden by Lumex, Inc. ("Lumex"). It does not appear that Lumex was represented by counsel in that matter. Internet research shows that Lumex is now a part of Graham-Field Health Products, Inc., a manufacturer of medical products in the healthcare industry. *See https://grahamfield.com/about/company-information/*. As such, this letter is directed to the corporate entity that appears to be the legal successor of Lumex.

ISSUE:

Whether the reachers and turners are eligible for duty-free treatment under subheading 9817.00.96, HTSUS, as "articles specially designed or adapted for the handicapped."

LAW AND ANALYSIS:

The Nairobi Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials of 1982, Pub. L. No. 97–446, 96 Stat. 2329, 2346 (1983) established the duty-free treatment for certain articles for the handicapped. Presidential Proclamation 5978 and Section 1121 of the Omnibus Trade and Competitiveness Act of 1988, provided for the implementation of the Nairobi Protocol into subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS.

Subheading 9817.00.96, HTSUS, covers: "Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles . . . Other." In *Sigvaris, Inc. v. United States*, 227 F. Supp 3d 1327, 1336 (CIT 2017), *aff'd*, 899 F.3d 1308 (Fed. Cir. 2018), the U.S. Court of International Trade ("CIT") explained that:

> The term "specially" is synonymous with "particularly," which is defined as "to an extent greater than in other cases or towards others." Webster's Third New International Dictionary 1647, 2186 (unabr. 2002). The dictionary definition for "designed" is something that is "done, performed, or made with purpose and intent often despite an appearance of being accidental, spontaneous, or natural." Webster's Third New International Dictionary 612 (unabr. 2002).

Subheading 9817.00.96, HTSUS, excludes "(i) articles for acute or transient disability; (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (iii) therapeutic and diagnostic articles; or, (iv) medicine or drugs." U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS. Thus, eligibility within subheading 9817.00.96, HTSUS, depends on whether the article is "specially designed or adapted for the use or benefit of the blind or physically and mentally handicapped persons," and whether it falls within any of the enumerated exclusions under U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS.

The term "blind or other physically or mentally handicapped persons" includes "any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working." U.S. Note 4(a), Subchapter XVII, Chapter 98, HTSUS. While the HTSUS does not establish a clear definition of substantial limitation, in *Sigvaris*, 227 F. Supp 3d at 1335, the CIT explained that "[t]he inclusion of the word 'substantially' denotes that the limitation must be 'considerable in amount' or 'to a large degree.'"

We must first evaluate "for whose, if anyone's, use and benefit is the article specially designed," and then, whether "those persons [are] physically handicapped []." *Sigvaris*, 899 F.3d at 1314. In other words, we must consider whether such persons are suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities.

The Court of Appeals for the Federal Circuit ("CAFC") clarified that to be "specially designed," the merchandise "must be intended for the use or benefit of a specific class of persons to an extent greater than for the use or benefit of others. This definition of 'specially designed' is consistent with factors that Customs uses in discerning for whose use and benefit a product is 'specially designed" ... we adopt them in our analysis ...." *Id.* at 1314–15. In *Danze, Inc. v. United States*, 319 F. Supp. 3d 1312, 1326 n.22 (CIT 2018), the CIT held that ADA compliance alone was insufficient to show that an item was "specifically designed or adapted" for the handicapped under subheading 9817.00.96, HTSUS.

Thus, to determine whether the reachers and turners are "specially designed" for the use or benefit of a class of persons to an extent greater than for others, we must examine the following five factors used by U.S. Customs and Border Protection ("CBP") and adopted by the CAFC in *Sigvaris*, 899 F.3d at 1314–15: (1) physical properties of the article itself (*e.g.*, whether the article is easily distinguishable in design, form and use from articles useful to non-handicapped persons); (2) presence of any characteristics that create a substantial probability of use by the chronically handicapped, so that the article is easily distinguishable from articles useful to the general public and any use thereof by the general public is so improbable that it would be fugitive; (3) importation by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; (4) sale in specialty stores that serve handicapped individuals; and (5) indication at the time of importation that the article is for the handicapped. *See also* T.D. 92–77 (26 Cust. B. 240 (1992)).

The first two factors to consider in determining whether an article is "specially designed," are the physical properties of the article and any characteristics of the article that easily distinguish it from articles useful to the general public. In this case, the reachers and turners in HQ 556449 were described as "various designs for use in retrieving objects beyond an individual's reach or for picking up items off the floor. On one end is a handle with control mechanisms, and on the other are "jaws" to grip items." The ruling did not examine the probability that these items would be of particular use to handicapped persons or whether they were easily distinguishable in design, form and use from articles useful to non-handicapped persons. In fact, the ruling describes the articles as useful for "individuals with limited mobility" and "for those who find it painful to bend down to the floor." We note that neither limited mobility nor pain in bending down is necessarily an indication of handicap and could be caused by issues that are more transient, such as injury or recovery from surgery or a medical procedure. While the ruling concluded without additional analysis that the reachers and turners were specially designed for use by the chronically handicapped, we disagree. We have found various e-Commerce websites that advertising substantially similar reachers and turners to the general public, for use with reaching items that are too high or in narrow spaces, for picking up litter or hazardous materials such as broken glass, reaching into the washer for socks or for picking up small items. The design of these reachers marketed to the general public appears to be indistinguishable from that of the reachers and turners described in HQ 556449. The reachers and turners in HQ 556449 were claimed to be for use for individuals with limited mobility, but the ruling did not address the likelihood that the merchandise was useful to the general public. We do not agree that the reachers and turners as described in HQ

556449 have characteristics that create a substantial probability that they will be used by the chronically handicapped and that any use by the general public would be fugitive. On the contrary, similar reachers and turners appear to be marketed towards persons suffering from various limitations to their mobility, ranging from transient limitations resulting from surgery, limitations due to arthritis (which may or may not rise to the level of a chronic handicap), age, and disability.

The third and fourth factors to consider in determining whether an article is "specially designed" are whether it is imported by manufacturers or distributors recognized to be involved in this class or kind of articles for the handicapped and whether it is sold in specialty stores that serve handicapped individuals. The protestant and their supplier in HQ 556449 were recognized distributors of articles for the handicapped. However, this factor alone is not dispositive. Reachers that are substantially similar to the reachers and turners described in HQ 556449 proliferate at e-commerce websites that serve the general public and these websites market the reachers both to a general public as well as to individuals who may be handicapped. Substantially similar reachers and turners are also sold at hardware stores. Thus, it appears that reachers and turners are sold both in specialty and general stores, and on general e-Commerce websites, as well as by specialized purveyors such as Graham Field/Lumex.

The fifth and final factor to consider is whether there was an indication at the time of importation that the article is for the handicapped, HQ 556449 was issued in response to an AFR. However, the ruling did not address the condition as imported of the reachers and turners.

Taken together, the five factors adopted by the CAFC and CBP weigh against a determination that the reachers and turners are specially designed for the use or benefit of disabled persons.

Finally, subheading 9817.00.96, HTSUS, does not cover articles for acute or transient disability. See U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS. The protestant in HQ 559446 never defines or describes the specific handicap or disability that would necessitate the use of the subject merchandise. Instead, protestant states that the products are to be used by those with limited mobility or those who find it painful to bend down to the floor to retrieve items. There is no doubt that there are chronic handicap or disabilities that would result in dexterity or mobility issues of this type, however, there are also transient or acute conditions that would do the same (e.g. surgery, an accident), as well as age related limitations in mobility and dexterity as well.

Based upon the nature of the reachers and turners, we believe it is unlikely that the reachers/turners would likely be sold exclusively to the handicapped, as opposed to the general public or to individuals with a transient or acute condition that does not rise to the level of a chronic disability. It is possible that at the time that HQ 556449 was issued, the reachers and turners were marketed, sold to and used by handicapped individuals and those with chronic disability, and that in the intervening period the articles have become

popular and useful for transient conditions and for the general public.[2] Accordingly, these articles are not adaptive articles of subheading 9817.00.96, HTSUS.

HOLDING:

The reachers and turners identified in the aforementioned ruling letter are ineligible for subheading 9817.00.96, HTSUS, which provides for as "articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons . . . other."

EFFECT ON OTHER RULINGS:

HQ 556449, dated May 5, 1992, is hereby modified to reflect that the reachers and turners identified therein are ineligible for subheading 9817.00.96, HTSUS.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial Trade and Facilitation

[2] We note that our assessment of use for transient or acute disability and use by the general public is based upon current information. We may revisit our decision as circumstances change.

WITHDRAWAL OF PROPOSED MODIFICATION OF THREE RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WOMEN'S SHIRTS WITH PARTIAL OPENINGS AND NO MEANS OF CLOSURE

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

ACTION: Withdrawal of notice of proposed modification of three ruling letters and proposed revocation of treatment relating to the tariff classification of women's shirts with partial openings and no means of closure.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), U.S. Customs and Border Protection (CBP) proposed to modify three ruling letters concerning tariff classification of women's shirts with partial openings and no means of closure under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 40, on November 6, 2019. One comment was received in response to that notice. CBP is withdrawing its proposed action.

EFFECTIVE DATE: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT: Parisa J. Ghazi, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0272.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 40, on November 6, 2019, proposing to modify three ruling letters pertaining to the tariff classification of women's shirts with partial openings and no means of closure, specifically, New York Ruling Letters ("NY") N019202, dated November 21, 2007, NY N018064, dated October 26, 2007, and NY M80970, dated March 30, 2006. In the November 6, 2019 *Customs Bulletin* notice, CBP proposed to modify these rulings to remove the language indicating that a means of closure is necessary for garments with partial openings of heading 6106, HTSUS. Upon further consideration of the 2022 amendments to Note 4 to Chapter 61, HTSUS, CBP is withdrawing its proposed modification of NY N019202, NY N018064, and NY M80970, in order to further consider the tariff classification of women's shirts with partial openings and no means of closure under the current HTSUS.

Dated: July 26, 2023

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

RECEIPT OF APPLICATION FOR "LEVER-RULE" PROTECTION

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

ACTION: Notice of receipt of application for "Lever-Rule" protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Intel Corporation, seeking "*Lever*-Rule" protection for foreign made engineering samples of electronics parts bearing the federally registered and recorded "SQUARE SPARK LOGO DESIGN" trademark and the "INTEL" word mark, not intended for commercial sale in the United States.

FOR FURTHER INFORMATION CONTACT: Zachary Keegan, Intellectual Property Enforcement Branch, Regulations & Rulings, Zachary.Keegan@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Intel Corporation seeking "*Lever*-Rule" protection. Protection is sought against importations of foreign made engineering samples of electronic parts not intended for commercial sale in the United States that bear the recorded "SQUARE SPARK LOGO DESIGN" trademark, U.S. Trademark Registration No. 6,854,119/CBP Recordation No. TMK 23–01547, and the "INTEL" word mark, U.S. Trademark Registration 2,446,693/CBP Recordation No. TMK 23–01551. In the event that CBP determines that the engineering samples under consideration are physically and materially different from the electronics components authorized for commercial sale in the United States, CBP will publish a notice in the Customs Bulletin, pursuant 19 CFR 133.2(f), indicating that the above-referenced trademarks are entitled to "Lever-Rule" protection with respect to those physically and materially different engineering samples.

Dated: July 28, 2023

ALAINA VAN HORN
Chief, Intellectual Property Enforcement Branch
Regulations and Rulings,
Office of International Trade

GRANT OF "LEVER-RULE" PROTECTION

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

ACTION: Notice of grant of "Lever-Rule" protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has granted "*Lever*-Rule" protection to The Procter & Gamble Company for foreign made skincare products containing sunscreen which bear the federally registered and recorded "OLAY" trademark. Notice of the receipt of an application for "*Lever*-Rule" protection was published in the Vol. 57, No. 17 issue of the *Customs Bulletin*.

FOR FURTHER INFORMATION CONTACT: Zachary Keegan, Intellectual Property Enforcement Branch, Regulations & Rulings, Zachary.Keegan@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has granted "*Lever*-Rule" protection for unauthorized imported skincare products containing sunscreen intended for sale in the United States, bearing the "OLAY" trademark (CBP Rec. No. 07–00758) owned by The Procter & Gamble Company.

In accordance with the holding of *Lever Bros. Co. v. United States*, 951 F.2d 1330 (D.C. Cir. 1993), CBP has determined that the gray market sunscreen-containing skincare products differ physically and materially from their correlating products authorized for commercial sale in the United States with respect to the following product characteristics: legal and regulatory requirements, product formulation, and other distinguishing characteristics.

ENFORCEMENT

Importation of the above-referenced sunscreen-containing skincare products, not intended for commercial sale in the United States is restricted, *unless* the labeling requirements of 19 CFR § 133.23(b) are satisfied.

Dated: August 2, 2023

ALAINA VAN HORN
Chief, Intellectual Property Enforcement Branch
Regulations and Rulings,
Office of International Trade

GENERAL DECLARATION (CBP FORM 7507)

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

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

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

DATES: Comments are encouraged and must be submitted (no later than August 30, 2023) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (88 FR 13455) on March 03, 2023, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of

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

Overview of This Information Collection

Title: General Declaration.

OMB Number: 1651–0002.

Form Number: CBP Form 7507.

Current Actions: CBP proposes to reduce the burden for this information collection by streamlining the Form 7507 and removing certain data elements.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: CBP Form 7507, *General Declaration,* must be filed for all aircraft required to enter or depart under the provisions of 19 CFR 122.41 or 122.61. This form is used to document entrance and clearance for arriving and departing aircraft at the required inspection facilities and inspections by appropriate regulatory agency staffs. Flight identifying information, including the aircraft registration number, which is not collected elsewhere by CBP, and a declaration attesting to the accuracy, completeness and truthfulness of all other documents that make up the manifest shall be submitted on the CBP Form 7507 for aircraft entering or departing the United States, with certain exceptions.

New Change:

To reduce paperwork and reduce duplication of information, the CBP Form 7507 is being streamlined, and will no longer require respondents to provide passenger and crew information, a declaration of health for the persons on board, and details about disinfecting and sanitizing treatments during the flight. The *General Declaration* (CBP Form 7507) will now only contain:

1. Flight identifying information.

2. The aircraft registration number (if not otherwise collected or received by CBP).

3. A declaration attesting to the accuracy, completeness, and truthfulness of all other documents that make up the manifest.

CBP Form 7507 is authorized by 19 U.S.C. 1431, 1433, and 1644a; and provided for by 19 CFR 122.43, 122.52, 122.54, 122.73, and 122.144. This form is accessible at *https://www.cbp.gov/newsroom/publications/forms.*

Type of Information Collection: CBP Form 7507.

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 2,644.

Estimated Number of Total Annual Responses: 1,322,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 44,023.

Dated: July 26, 2023.

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

[Published in the Federal Register, July 31, 2023 (88 FR 49476)]

PETROLEUM REFINERIES IN FOREIGN TRADE SUB-ZONES

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

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

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

DATES: Comments are encouraged and must be submitted (no later than August 30, 2023) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (88 FR 12971) on March 01, 2023, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the

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

Overview of This Information Collection

Title: Petroleum Refineries in Foreign Trade Sub-zones.

OMB Number: 1651–0063.

Form Number: N/A.

Current Actions: Extension with a decrease in burden but no change to the information collected or method of collection.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: The Foreign Trade Zones Act, 19 U.S.C. 81c(d), contains specific provisions for petroleum refinery sub-zones. It permits refiners and U.S. Customs and Border Protection (CBP) to assess the relative value of such multiple products at the end of the manufacturing period during which these products were produced, when the actual quantities of these products resulting from the refining process can be measured with certainty.

19 CFR 146.4(d) provides that the operator of the refinery sub-zone is required to retain all records relating to the above-mentioned activities for five years after the merchandise is removed from the sub-zone. Further, the records shall be readily available for CBP review at the sub-zone.

Instructions on compliance with these record keeping provisions are available in the Foreign Trade Zone Manual which is accessible at: *http://www.cbp.gov/document/guides/foreign-trade-zones-manual.*

Type of Information Collection: Recordkeeping for Petroleum Refineries.

Estimated Number of Respondents: 47.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 47.

Estimated Time per Response: 1,000 hours.

Estimated Total Annual Burden Hours: 47,000.

Dated: July 26, 2023.

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

[Published in the Federal Register, July 31, 2023 (88 FR 49478)]

APPLICATION TO PAY OFF OR DISCHARGE ALIEN CREWMAN (FORM I–408)

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

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

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

DATES: Comments are encouraged and must be submitted (no later than August 30, 2023) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (88 FR 13454) on March 3, 2023, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the

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

Overview of This Information Collection

Title: Application to Pay Off or Discharge Alien Crewman.

OMB Number: 1651–0106.

Form Number: Form I–408.

Current Actions: CBP is proposing to extend this information collection with a increase in burden due to an increase in the number of respondents and responses received.[1]

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: CBP Form I–408, Application to Pay Off or Discharge Alien Crewman, is used as an application to request authorization from the Secretary of Homeland Security to pay off or discharge an alien crewman by the owner, agent, consignee, charterer, master, or commanding officer of the vessel or aircraft on which the alien crewman arrived in the United States. This form is submitted to the CBP officer having jurisdiction over the area in which the vessel or aircraft is located at the time of application. CBP Form I–408 is authorized by section 256 of the Immigration and Nationality Act (8 U.S.C. 1286) and provided for by 8 CFR 252.1(h). This form is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title_1=408*.

Type of Information Collection: Form I–408.

Estimated Number of Respondents: 112,500.

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[1] CBP inadvertently described this change as a decrease in the 60-Day Notice. 88 FR at 13454; *see also* OMB, Notice of OMB Action (July 23, 2020), *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202003–1651–002#,* (providing the number of responses and burden hours for the currently approved collection).

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 112,500.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 46,875.

Dated: July 26, 2023.

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

[Published in the Federal Register, July 31, 2023 (88 FR 49477)]

FOREIGN ASSEMBLER'S DECLARATION

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

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

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

DATES: Comments are encouraged and must be submitted (no later than August 30, 2023) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (88 FR 13455) on March 03, 2023, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of

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

Overview of This Information Collection

Title: Foreign Assembler's Declaration.

OMB Number: 1651–0031.

Form Number: N/A.

Current Actions: Extension without change.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: In accordance with 19 CFR 10.24, a Foreign Assembler's Declaration must be made in connection with the entry of assembled articles under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS, 19 U.S.C. 1202). This declaration includes information such as the quantity, value and description of the imported merchandise. The declaration is made by the person who performed the assembly operations abroad and it includes an endorsement by the importer. The Foreign Assembler's Declaration is used by CBP to determine whether the operations performed are within the purview of subheading 9802.00.80, HTSUS and therefore eligible for preferential tariff treatment.

19 CFR 10.24(c) and (d) require that the importer/assembler maintain records for 5 years from the date of the related entry and that they make these records readily available to CBP for audit, inspection, copying, and reproduction.

Instructions for complying with this regulation are posted on the *CBP.gov* website at: *http://www.cbp.gov/trade/trade-community/outreach-programs/trade-agreements/nafta/repairs-alterations/subchpt-9802.*

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

Type of Information Collection: Foreign Assembler's Declaration (Reporting).

Estimated Number of Respondents: 2,730.

Estimated Number of Annual Responses per Respondent: 128.

Estimated Number of Total Annual Responses: 349,440.

Estimated Time per Response: 50 minutes.

Estimated Total Annual Burden Hours: 291,083.

Type of Information Collection: Foreign Assembler's Declaration (Record Keeping).

Estimated Number of Respondents: 2,730.

Estimated Number of Annual Responses per Respondent: 128.

Estimated Number of Total Annual Responses: 349,440.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 29,004.

Dated: July 26, 2023.

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

[Published in the Federal Register, July 31, 2023 (88 FR 49475)]

COBRA FEES TO BE ADJUSTED FOR INFLATION IN FISCAL YEAR 2024 CBP DEC. 23–08

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) is adjusting certain customs user fees and corresponding limitations established by the Consolidated Omnibus Budget Reconciliation Act (COBRA) for Fiscal Year 2024 in accordance with the Fixing America's Surface Transportation Act (FAST Act) as implemented by the CBP regulations.

DATES: The adjusted amounts of customs COBRA user fees and their corresponding limitations set forth in this notice for Fiscal Year 2024 are required as of October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Tina Ghiladi, Senior Advisor, International Travel & Trade, Office of Finance, 202–344–3722, *UserFeeNotices@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Adjustments of COBRA User Fees and Corresponding Limitations for Inflation

On December 4, 2015, the Fixing America's Surface Transportation Act (FAST Act, Pub. L. 114–94) was signed into law. Section 32201 of the FAST Act amended section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by requiring the Secretary of the Treasury (Secretary) to adjust certain customs COBRA user fees and corresponding limitations to reflect certain increases in inflation.

Sections 24.22 and 24.23 of title 19 of the Code of Federal Regulations (19 CFR 24.22 and 24.23) describe the procedures that implement the requirements of the FAST Act. Specifically, paragraph (k) in section 24.22 (19 CFR 24.22(k)) sets forth the methodology to determine the change in inflation as well as the factor by which the fees and limitations will be adjusted, if necessary. The fees and limitations subject to adjustment, which are set forth in Appendix A and Appendix B of part 24, include the commercial vessel arrival fees, commercial truck arrival fees, railroad car arrival fees, private vessel arrival fees, private aircraft arrival fees, commercial aircraft and vessel passenger arrival fees, dutiable mail fees, customs broker permit user

fees, barges and other bulk carriers arrival fees, and merchandise processing fees, as well as the corresponding limitations.

B. Determination of Whether an Adjustment Is Necessary for Fiscal Year 2024

In accordance with 19 CFR 24.22, CBP must determine annually whether the fees and limitations must be adjusted to reflect inflation. For Fiscal Year 2024, CBP is making this determination by comparing the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982—1984 (CPI–U) for the current year (June 2022–May 2023) with the average of the CPI-U for the comparison year (June 2021–May 2022) to determine the change in inflation, if any. If there is an increase in the CPI-U of greater than one (1) percent, CBP must adjust the customs COBRA user fees and corresponding limitations using the methodology set forth in 19 CFR 24.22(k). Following the steps provided in paragraph (k)(2) of section 24.22, CBP has determined that the increase in the CPI-U between the most recent June to May twelve-month period (June 2022–May 2023) and the comparison year (June 2021–May 2022) is 6.79[1] percent. As the increase in the CPI-U is greater than one (1) percent, the customs COBRA user fees and corresponding limitations must be adjusted for Fiscal Year 2024.

C. Determination of the Adjusted Fees and Limitations

Using the methodology set forth in section 24.22(k)(2) of the CBP regulations (19 CFR 24.22(k)), CBP has determined that the factor by which the base fees and limitations will be adjusted is 26.670 percent (base fees and limitations can be found in Appendices A and B to part 24 of title 19). In reaching this determination, CBP calculated the values for each variable found in paragraph (k) of 19 CFR 24.22 as follows:

- The arithmetic average of the CPI-U for June 2022–May 2023, referred to as (A) in the CBP regulations, is 298.952;
- The arithmetic average of the CPI-U for Fiscal Year 2014, referred to as (B), is 236.009;
- The arithmetic average of the CPI-U for the comparison year (June 2021–May 2022), referred to as (C), is 279.974;
- The difference between the arithmetic averages of the CPI-U of the comparison year (June 2021–May 2022) and the current year (June 2022—May 2023), referred to as (D), is 18.978;

[1] The figures provided in this notice may be rounded for publication purposes only. The calculations for the adjusted fees and limitations were made using unrounded figures, unless otherwise noted.

• This difference rounded to the nearest whole number, referred to as (E), is 19;

• The percentage change in the arithmetic averages of the CPI-U of the comparison year (June 2021–May 2022) and the current year (June 2022–May 2023), referred to as (F), is 6.79 percent;

• The difference in the arithmetic average of the CPI-U between the current year (June 2022–May 2023) and the base year (Fiscal Year 2014), referred to as (G), is 62.943; and

• Lastly, the percentage change in the CPI-U from the base year (Fiscal Year 2014) to the current year (June 2022–May 2023), referred to as (H), is 26.670 percent.

D. Announcement of New Fees and Limitations

The adjusted amounts of customs COBRA user fees and their corresponding limitations for Fiscal Year 2024 as adjusted by 26.670 percent set forth below are required as of October 1, 2023. Table 1 provides the fees and limitations found in 19 CFR 24.22 as adjusted for Fiscal Year 2024, and Table 2 provides the fees and limitations found in 19 CFR 24.23 as adjusted for Fiscal Year 2024.

TABLE 1—CUSTOMS COBRA USER FEES AND LIMITATIONS FOUND IN 19 CFR 24.22 AS ADJUSTED FOR FISCAL YEAR 2024

19 U.S.C. 58c	19 CFR 24.22	Customs COBRA user fee/limitation	New fee/limitation adjusted in accordance with the FAST Act
(a)(1)	(b)(1)(i)	Fee: Commercial Vessel Arrival Fee .	$553.55
(b)(5)(A)	(b)(1)(ii)	Limitation: Calendar Year Maximum for Commercial Vessel Arrival Fees.	7,543.20
(a)(8)	(b)(2)(i)	Fee: Barges and Other Bulk Carriers Arrival Fee	139.34
(b)(6)	(b)(2)(ii)	Limitation: Calendar Year Maximum for Barges and Other Bulk Carriers Arrival Fees.	1,900.05

19 U.S.C. 58c	19 CFR 24.22	Customs COBRA user fee/limitation	New fee/limitation adjusted in accordance with the FAST Act
(a)(2)	(c)(1)	Fee: Commercial Truck Arrival Fee[2] [3]	6.95
(b)(2)	(c)(2) and (3) ..	Limitation: Commercial Truck Calendar Year Prepayment Fee [4].	126.67
(a)(3)	(d)(1)	Fee: Railroad Car Arrival Fee	10.45
(b)(3)	(d)(2) and (3) ..	Limitation: Railroad Car Calendar Year Prepayment Fee	126.67
(a)(4)	(e)(1) and (2) ..	Fee and Limitation: Private Vessel or Private Aircraft First Arrival/ Calendar Year Prepayment Fee.	34.83
(a)(6)	(f)	Fee: Dutiable Mail Fee	6.97
(a)(5)(A)	(g)(1)(i)	Fee: Commercial Vessel or Commercial Aircraft Passenger Arrival Fee.	6.97
(a)(5)(B)	(g)(1)(ii)	Fee: Commercial Vessel Passenger Arrival Fee (from one of the territories and possessions of the United States).	2.44
(a)(7)	(h)	Fee: Customs Broker Permit User Fee	174.80

[2] The Commercial Truck Arrival Fee is the CBP fee only; it does not include the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Agricultural and Quarantine Inspection (AQI) User Fee (currently $7.29) that is collected by CBP on behalf of USDA to make a total Single Crossing Fee of $14.24. See 7 CFR 354.3(c) and 19 CFR 24.22(c)(1). Once eighteen Single Crossing Fees have been paid and used for a vehicle identification number (VIN)/vehicle in a Decal and Transponder Online Procurement System (DTOPS) account within a calendar year, the payment required for the nineteenth (and subsequent) single-crossing is only the AQI fee (currently $7.29) and no longer includes CBP's $6.95 Commercial Truck Arrival fee (for the remainder of that calendar year).

[3] The Commercial Truck Arrival fee is adjusted down from $6.97 to the nearest lower nickel. See 82 FR 50523 (November 1, 2017).

[4] The Commercial Truck Calendar Year Prepayment Fee is the CBP fee only; it does not include the AQI Commercial Truck with Transponder Fee (currently $291.60) that is collected by CBP on behalf of APHIS to make the total Commercial Vehicle Transponder Annual User Fee of $418.27.

TABLE 2—CUSTOMS COBRA USER FEES AND LIMITATIONS FOUND IN 19 CFR 24.23 AS ADJUSTED FOR FISCAL YEAR 2024

19 U.S.C. 58c	19 CFR 24.23	Customs COBRA user fee/limitation	New fee/limitation adjusted in accordance with the FAST Act
(b)(9)(A)(ii)	(b)(1)(i)(A)	Fee: Express Consignment Carrier/ Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	$1.27
(b)(9)(B)(i)	(b)(4)(ii)[5]	Limitation: Minimum Express Consignment Carrier/Centralized Hub Facility Fee[6].	0.44
(b)(9)(B)(i)	(b)(4)(ii)[7]	Limitation: Maximum Express Consignment Carrier/Centralized Hub Facility Fee.	1.27
(a)(9)(B)(i); ..... (b)(8)(A)(i)	(b)(1)(i)(B)[8]	Limitation: Minimum Merchandise Processing Fee[9]	31.67
(a)(9)(B)(i); ..... (b)(8)(A)(i)	(b)(1)(i)(B)[10] ...	Limitation: Maximum Merchandise Processing Fee[11] [12]	614.35
(b)(8)(A)(ii)	(b)(1)(ii)	Fee: Surcharge for Manual Entry or Release	3.80
(a)(10)(C)(i)	(b)(2)(i)	Fee: Informal Entry or Release; Automated and Not Prepared by CBP Personnel.	2.53
(a)(10)(C)(ii) ...	(b)(2)(ii)	Fee: Informal Entry or Release; Manual and Not Prepared by CBP Personnel.	7.60

[5] Appendix B of part 24 inadvertently included a reference to paragraph (b)(1)(i)(B)(2) of section 24.23. However, the reference should have been to paragraph (b)(4)(ii). CBP intends to publish a future document in the **Federal Register** to make several technical corrections to part 24 of title 19 of the CFR, including corrections to Appendix B of part 24. The technical corrections will also address the inadvertent errors specified in footnotes 7, 8, and 10 below.

[6] Although the minimum limitation is published, the fee charged is the fee required by 19 U.S.C. 58c(b)(9)(A)(ii).

[7] Appendix B of part 24 inadvertently included a reference to paragraph (b)(1)(i)(B)(2) of section 24.23. However, the reference should have been to paragraph (b)(4)(ii).

[8] Appendix B of part 24 inadvertently included a reference to paragraph (b)(1)(i)(B)(1) of section 24.23. However, the reference should have been to paragraph (b)(1)(i)(B).

[9] Only the limitation is increasing; the *ad valorem* rate of 0.3464 percent remains the same. *See* 82 FR 50523 (November 1, 2017).

[10] Appendix B of part 24 inadvertently included a reference to paragraph (b)(1)(i)(B)(1) of section 24.23. However, the reference should have been to paragraph (b)(1)(i)(B).

[11] Only the limitation is increasing; the *ad valorem* rate of 0.3464 percent remains the same. *See* 82 FR 50523 (November 1, 2017).

[12] For monthly pipeline entries, *see https://www.cbp.gov/trade/entry-summary/pipeline-monthly-entry-processing/pipeline-line-qa*.

19 U.S.C. 58c	19 CFR 24.23	Customs COBRA user fee/limitation	New fee/limitation adjusted in accordance with the FAST Act
(a)(10)(C)(iii) ..	(b)(2)(iii)	Fee: Informal Entry or Release; Manual; Prepared by CBP Personnel.	11.40
(b)(9)(A)(ii)	(b)(4)	Fee: Express Consignment Carrier/ Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	1.27

Tables 1 and 2, setting forth the adjusted fees and limitations for Fiscal Year 2024, will also be maintained for the public's convenience on the CBP website at *www.cbp.gov*.

Troy A. Miller, Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division of CBP, for purposes of publication in the **Federal Register**.

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

[Published in the Federal Register, July 28, 2023 (88 FR 48900)]

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 06 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 July 2023. A total of 151 recordation applications were approved, consisting of 9 copyrights and 142 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*.

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 — July 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 23–00117	7/13/2023	7/13/2043	LooseLeaf Free YSL Package Design.	LooseLeaf International LLC. Address: 18357 NE 4th Ct., Miami, FL, 33179, United States.	No
COP 23–00119	7/13/2023	7/13/2043	Design of Birthday Balloon	Anagram International, Inc. Address: 7700 Anagram Drive, Eden Prairie, MN, 55344.	No
COP 23–00120	7/13/2023	7/13/2043	Design of Moon and Stars for Balloon	Anagram International, Inc. Address: 7700 Anagram Drive, Eden Prairie, MN, 55344.	No
COP 23–00122	7/12/2023	1/12/2024	Bloodright Heir Ancestral Estate Genealogy	Taquan Gullett-El	No
COP 23–00123	7/20/2023	7/20/2043	Easy As Place Push Pull Artwork.	Life Vac LLC. Address: 110 Lake Avenue South, Suite 35, Nesconset, NY, 11767, United States.	No
COP 23–00124	7/19/2023	7/19/2043	LifeVac Airway Clearance Device Artwork	Life Vac LLC	No
COP 23–00125	7/20/2023	7/20/2043	Lifevac devices	Life Vac LLC. Address: 110 Lake Avenue South, Suite 35, Nesconset, NY, 11767, United States.	No
COP 23–00126	7/20/2023	7/20/2043	Lifevac Device	Life Vac LLC.	No
COP 23–00127	7/20/2023	7/20/2043	Tu Tirla Xyahka Ne Myqut	Tu Tirla Xyahka Ne Myqut. Address: 415 Boston Post Rd, Ste 3 - 548, Milford, CT, 06460.	No
TMK 03–00586	7/3/2023	8/27/2033	IHAVEISSUES	L L WHITFIELD FAMILY TRUST	No
TMK 04–01112	7/11/2023	3/31/2033	HOUSTON TEXANS	HOUSTON NFL HOLDINGS L.P.	No

CBP IPR RECORDATION — July 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 04–01113	7/13/2023	3/24/2033	BULL HEAD DESIGN	HOUSTON NFL HOLDINGS L.P.	No
TMK 05–00640	7/6/2023	9/24/2033	SHEER COVER	GUTHY-RENKER LLC	No
TMK 07–00061	7/19/2023	10/21/2032	HAVRIX	GlaxoSmithKline Biologicals, S.A.	No
TMK 11–00682	7/7/2023	6/30/2033	HALO	Halo Electronics, Inc.	No
TMK 11–00947	7/7/2023	7/15/2033	Stacked Cup Design	Speed Stacks, Inc.	No
TMK 12–00870	1/3/2022	10/19/2031	SCREAMIN' EAGLE AND DESIGN	H-D U.S.A., LLC	No
TMK 12–00912	1/14/2022	11/20/2031	HD	H-D U.S.A., LLC	No
TMK 13–00332	7/11/2023	5/12/2033	POKÉDEX	Nintendo of America Inc.	No
TMK 13–00438	7/17/2023	7/27/2033	G & DESIGN	LVMH FRAGRANCE BRANDS	No
TMK 13–00625	7/13/2023	9/4/2033	RAINBOW LOOM	CHOON'S DESIGN INC.	No
TMK 13–00686	7/7/2023	7/9/2033	LEPAI	Parts Express International, Inc.	No
TMK 13–00695	7/6/2023	3/24/2033	PIKACHU	Nintendo of America Inc.	No
TMK 13–00874	7/14/2023	8/11/2033	Toile Monogram Design	LOUIS VUITTON MALLETIER	No
TMK 13–01326	7/28/2023	9/17/2028	ORION	KATARA LLC	No
TMK 14–00006	7/28/2023	7/6/2024	HCCA	KATARA LLC	No
TMK 14–00008	7/28/2023	3/30/2029	XTR	KATARA LLC	No
TMK 14–00049	7/28/2023	5/10/2024	XTRPRO	KATARA LLC	No
TMK 14–00063	7/28/2023	12/16/2023	ORION and Design	KATARA LLC	No
TMK 14–00085	7/28/2023	5/24/2024	COBALT	KATARA LLC	No

CBP IPR RECORDATION — July 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 14–00276	7/11/2023	7/22/2033	VZ	GSM (Trademarks) Pty Ltd	No
TMK 14–00459	7/28/2023	1/8/2024	COBALT (STYLIZED)	KATARA LLC	No
TMK 14–00638	7/12/2023	8/21/2033	GRIPPER	HOLLISTER-WHITNEY ELEVATOR CORP.	No
TMK 14–00700	7/11/2023	5/4/2033	ROPE GRIPPER	HOLLISTER WHITNEY ELEVATOR CORP.	No
TMK 14–00818	7/5/2023	7/9/2033	PROTECT YOUR GUEST	Sobel Westex CORPORATION	No
TMK 15–00534	7/5/2023	5/26/2033	THINKING PUTTY	Crazy Aaron Enterprises, Inc.	No
TMK 15–00681	7/28/2023	10/30/2023	PROUD TO BE LOUD (stylized)	KATARA LLC	No
TMK 17–00026	7/11/2023	8/25/2033	SNAPPI	SNAPPI HOLDINGS (PTY) LTD	No
TMK 17–00519	7/24/2023	8/13/2033	HOOLA	BeneFit Cosmetics LLC	No
TMK 17–00827	7/12/2023	9/11/2033	HOOEY OIL GEAR LOGO	Hooey, LLC	No
TMK 17–01257	7/12/2023	7/13/2033	R-EXPO (STYLIZED)	R. EXPO (USA) LTD., INC.	No
TMK 17–01294	7/24/2023	8/6/2033	FRESH	Fresh Inc	No
TMK 17–01302	7/17/2023	7/15/2033	BECK ANXIETY INVENTORY	NCS PEARSON, INC.	No
TMK 17–01303	7/17/2023	7/15/2033	BECK DEPRESSION INVENTORY	NCS PEARSON, INC.	No
TMK 17–01308	7/26/2023	4/28/2033	PEARSON	PEARSON PLC	No
TMK 17–01309	7/26/2023	6/11/2033	PEARSON	PEARSON PLC	No
TMK 18–00254	7/14/2023	8/14/2033	PANDORA	Pandora A/S	No
TMK 19–00557	7/21/2023	7/22/2033	SHOULDER DOLLY	DEN, INC.	No

CBP IPR RECORDATION — July 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 19–01227	7/21/2023	7/23/2033	MODERN BCAA	MODERN SPORTS NUTRITION, LLC	No
TMK 20–00135	7/7/2023	9/25/2033	AMES	THE AMES COMPANIES, INC.	No
TMK 20–00148	7/19/2023	7/30/2033	MEDTRONIC (STYLIZED)	Medtronic, Inc.	No
TMK 20–00609	7/13/2023	7/1/2033	ROCKWELL AUTOMATION	Rockwell Automation, Inc.	No
TMK 21–01054	7/18/2023	10/11/2033	RETAINE CMC	OCuSOFT, Inc.	No
TMK 21–01055	7/18/2023	9/11/2033	RETAINE MGD	OCuSOFT, Inc.	No
TMK 22–00258	7/6/2023	7/15/2033	Orange Router Bit Design	CMT UTENSILI S.P.A.	No
TMK 22–00562	7/17/2023	9/4/2033	FRANK FAMILY VINEYARDS	Frank Family Vineyards, LLC	No
TMK 22–00726	7/5/2023	10/1/2033	LITTLE SWIMMERS	Kimberly-Clark Worldwide, Inc.	No
TMK 22–00891	7/20/2023	9/4/2032	EDEN	Eden Stone Co., LLC	No
TMK 23–01215	1/13/2023	7/14/2032	HARLEY	H-D MICHIGAN, LLC	No
TMK 23–01861	7/3/2023	9/2/2032	G & DESIGN	LVMH FRAGRANCE BRANDS	No
TMK 23–01862	7/6/2023	1/4/2029	REYNOBOND	ARCONIC TECHNOLOGIES LLC	No
TMK 23–01863	7/7/2023	8/4/2031	HEMANI	HEMANI HERBAL, LLC	No
TMK 23–01864	7/7/2023	10/4/2033	Cigar with Leaf Design	Looseleaf International, LLC	No
TMK 23–01865	7/11/2023	9/13/2033	AGILESWITCH & DESIGN	Microchip Technology Incorporated Legal Department	No
TMK 23–01866	7/11/2023	10/11/2033	Y (STYLIZED)	SPIKE CABLE NETWORKS INC.	No
TMK 23–01867	7/11/2023	9/20/2033	FOX & Design	Fox Factory, Inc.	No
TMK 23–01868	7/11/2023	10/19/2026	TOILETWAND	The Clorox Company	No

CBP IPR RECORDATION — July 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01869	7/13/2023	7/17/2032	VIVA LA JUICY	Juicy Couture, Inc.	No
TMK 23–01870	7/13/2023	2/17/2031	AMY'S BUBBLING BOUTIQUE, INC.	Amys Bubbling Boutique Inc	No
TMK 23–01871	7/13/2023	9/7/2032	SUPERSHAPE	Anagram International, Inc.	No
TMK 23–01872	7/13/2023	10/11/2033	Y Design	SPIKE CABLE NETWORKS INC	No
TMK 23–01873	7/13/2023	10/11/2033	STRAWBERRY DREAM	Looseleaf International, LLC	No
TMK 23–01874	7/13/2023	5/5/2033	HIGH PERFORMANCE CAR AUDIO	MD Audio Engineering, Inc.	No
TMK 23–01875	7/13/2023	8/2/2033	AIRLOONZ	Anagram International, Inc.	No
TMK 23–01876	7/14/2023	9/28/2026	CARRUCCI	Tim C. Tam	No
TMK 23–01877	7/14/2023	11/28/2032	DOBYNS RODS & DESIGN	Dobyns Rods, Inc.	No
TMK 23–01878	7/14/2023	8/23/2033	DOBYNS RODS	Dobyns Rods, Inc.	No
TMK 23–01879	7/14/2023	4/17/2027	TOOLWAY	Toolway Industries Ltd.	No
TMK 23–01880	7/18/2023	12/15/2032	RYTEC & DESIGN	RYTEC CORPORATION	No
TMK 23–01881	7/18/2023	8/11/2033	RYTEC	RYTEC CORPORATION	No
TMK 23–01882	7/18/2023	9/8/2023	FAST-SEAL	RYTEC CORPORATION	No
TMK 23–01883	7/18/2023	7/23/2026	PREDADOOR	RYTEC CORPORATION	No
TMK 23–01884	7/18/2023	12/14/2029	SPARCO	SPARCO S.P.A ITALY	No
TMK 23–01885	7/18/2023	1/12/2030	SPIRAL	RYTEC CORPORATION	No
TMK 23–01886	7/18/2023	12/4/2031	QUIET WALK	MP GLOBAL PRODUCTS, LLC	No
TMK 23–01887	7/18/2023	12/10/2032	TOMMY HILFIGER	Tommy Hilfiger Licensing LLC	No

CBP IPR RECORDATION — July 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01888	7/17/2023	6/9/2024	PG TIPS	EKATERRA GROUP NETHERLANDS	No
TMK 23–01889	7/17/2023	3/26/2027	KNEADER	KNEADER MACHINERY CO. TAIWAN	No
TMK 23–01890	7/18/2023	4/23/2037	TRX	JFXD TRX ACQ, LLC	No
TMK 23–01891	7/18/2023	9/26/2027	SUSPENSION TRAINING	JFXD TRX ACQ LLC	No
TMK 23–01892	7/18/2023	11/21/2027	SPARCO	Sparco S.p.A. Via Orazio Antinori	No
TMK 23–01893	7/17/2023	9/24/2028	ZERO	Blunt Wrap U.S.A., Inc.	
TMK 23–01894	7/17/2023	7/28/2029	PG TIPS	EKATERRA GROUP NETHERLANDS	No
TMK 23–01895	7/17/2023	10/29/2024	IMPERIAL PLUS	PolyExcel, LLC	No
TMK 23–01896	7/19/2023	12/20/2026	ALCHEMY CRYSTAL SINGING BOWLS	CRYSTAL TONES, LLC	No
TMK 23–01897	7/19/2023	11/15/2027	CRYSTAL TONES	CRYSTAL TONES, LLC	No
TMK 23–01898	7/17/2023	7/10/2028	SPIRAL VP	Rytec Corporation	No
TMK 23–01899	7/19/2023	2/26/2030	SUPERGRADE BOWL	Crystal Tones, LLC	No
TMK 23–01900	7/17/2023	6/17/2030	FLEXTEC	Rytec Corporation	
TMK 23–01901	7/18/2023	8/26/2030	PRACTITIONER BOWL	Crystal Tones, LLC	No
TMK 23–01902	7/18/2023	2/10/2031	HE	U.S. Department of Health and Human Services	No
TMK 23–01903	7/18/2023	4/5/2031	PURE & CLEAN Design	Pure & Clean, LLC	No
TMK 23–01904	7/17/2023	6/30/2031	SLINGSONIC & DESIGN	SLINGSONIC INC.	No
TMK 23–01905	7/18/2023	3/6/2033	SPARCO	SPARCO S.P.A. ITALY	No

CBP IPR RECORDATION — July 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01906	7/18/2023	3/13/2033	PAPR100-N	U.S. Department of Health and Human Services	No
TMK 23–01907	7/17/2023	9/27/2033	DUBLIN INK	Paterno Imports, Ltd.	No
TMK 23–01908	7/18/2023	10/11/2033	AR AMY RENÉ	Amy Rene Murray	No
TMK 23–01909	7/18/2023	10/18/2033	MSI	Microtech Knives, Inc.	No
TMK 23–01910	7/18/2023	10/18/2033	M390MK	Microtech Knives, Inc.	No
TMK 23–01911	7/18/2023	10/18/2033	TOP GUN MAVERICK	Paramount Pictures	
TMK 23–01912	7/20/2023	8/5/2025	SPEKTRA	FK Irons, Inc.	No
TMK 23–01913	7/20/2023	8/9/2027	XION	FK Irons Inc.	No
TMK 23–01914	7/20/2023	1/13/2031	FLUX	FK Irons, Inc.	No
TMK 23–01915	7/20/2023	12/7/2031	XION	FK Irons Inc.	No
TMK 23–01916	7/20/2023	12/21/2031	DESIGN OF OVAL SHAPE	FK Irons Inc.	No
TMK 23–01917	7/18/2023	10/18/2033	SOCOM BRAVO	Microtech Knives, Inc.	No
TMK 23–01918	7/18/2023	10/18/2033	WARHOUND	Microtech Knives, Inc.	No
TMK 23–01919	7/21/2023	3/19/2026	G G (stylized)	Guerlain S.A.	No
TMK 23–01920	7/20/2023	4/15/2032	CONFIGURATION OF DIOR J' ADORE PERFUME BOTTLE	PARFUMS CHRISTIAN DIOR, S.A.	No
TMK 23–01921	7/21/2023	7/30/2032	Configuration of Dior Poison Bottle	Parfums Christian Dior, S.A.	No
TMK 23–01922	7/20/2023	8/28/2029	RILON	Rytec Corporation	No
TMK 23–01923	7/21/2023	3/15/2031	VIP JEANS	Street Denim Holdings Inc.	No

CBP IPR RECORDATION — July 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01924	7/21/2023	12/3/2031	RYLON	RYTEC CORPORATION	No
TMK 23–01925	7/21/2023	4/18/2032	LEMON NADE & Design	LEMONNADE, INC.	No
TMK 23–01926	7/21/2023	8/24/2032	LEMON NADE & Design	LEMONNADE, INC.	No
TMK 23–01927	7/21/2023	9/21/2032	FK IRONS	FK Irons Inc.	No
TMK 23–01928	7/21/2023	6/7/2033	EXO	FK Irons Inc.	No
TMK 23–01929	7/21/2023	7/4/2033	SMARTSURROUND	Rytec Corporation	No
TMK 23–01930	7/21/2023	7/25/2033	HAPPY MOOSE	Happy Moose Juice, Inc.	No
TMK 23–01931	7/21/2023	8/30/2033	CORK & MILL	Hunter Jackson Brands, LLC	No
TMK 23–01932	7/21/2023	10/18/2033	SIPHON II	Microtech Knives, Inc.	No
TMK 23–01933	7/21/2023	10/18/2033	S M & Dagger Design	Microtech Knives, Inc.	No
TMK 23–01934	7/21/2023	10/18/2033	M & DAGGER DESIGN	Microtech Knives, Inc.	No
TMK 23–01935	7/24/2023	10/4/2033	ROTUBA	The Rotuba Extruders, Inc.	No
TMK 23–01936	7/24/2023	5/28/2033	COOKIES	Cookies SF LLC	No
TMK 23–01937	7/24/2023	5/28/2033	C & DESIGN	COOKIES SF LLC	No
TMK 23–01938	7/24/2023	5/28/2033	C & DESIGN	COOKIES SF LLC	No
TMK 23–01939	7/24/2023	1/13/2026	DARC SPORT	Civil Clothing Inc.	No
TMK 23–01940	7/24/2023	1/15/2033	IMPACT & DESIGN	Gradus Group LLC	No
TMK 23–01941	7/24/2023	12/12/2026	IMPACT	GRADUS GROUP LLC	No
TMK 23–01942	7/25/2023	3/1/2030	HIT & DESIGN	GASEOSAS LUX S.A	No

CBP IPR RECORDATION — July 2023

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 23–01943	7/26/2023	9/17/2027	MARZOCCHI	Tenneco Marzocchi SRL	No
TMK 23–01944	7/26/2023	6/27/2027	Configuration of the housing of an electro-mechanical safety warning alarm	Electronic Controls Company	No
TMK 23–01945	7/28/2023	2/27/2033	TRAVISMATHEW	TravisMathew, LLC.	No
TMK 23–01946	7/28/2023	1/8/2034	L'HOMME IDÉAL	GUERLAIN SA	No
TMK 23–01947	7/28/2023	10/12/2026	LUCKY FEATHER & DESIGN	Lucky Feather, LLC	No
TMK 23–01948	7/28/2023	11/22/2027	Dress Design	GUERLAIN SOCIETE ANONYME	No
TMK 23–01949	7/28/2023	3/19/2028	MON GUERLAIN (STYLIZED)	GUERLAIN SOCIETE ANONYME	No
TMK 23–01950	7/26/2023	9/22/2031	RACEFACE (STYLIZED)	FOX Factory, Inc.	No
TMK 23–01951	7/26/2023	5/21/2033	AVAIL	Automatic Equipment Manufacturing Co.	No
TMK 23–01952	7/27/2023	8/2/2033	AIMER & DESIGN	Aimer Co., Ltd.	No

U.S. Court of Appeals for the Federal Circuit

UNITED STATES, Plaintiff-Appellant v. KATANA RACING, INC., DBA WHEEL & TIRE DISTRIBUTORS, Defendant-Appellee

Appeal No. 2022–1832

Appeal from the United States Court of International Trade in No. 1:19-cv-00125-TJA, Senior Judge Thomas J. Aquilino, Jr.

Decided: August 3, 2023

EMMA EATON BOND, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for plaintiff-appellant. Also represented by BRIAN M. BOYNTON, TARA K. HOGAN, PATRICIA M. MCCARTHY.

PRATIK A. SHAH, Akin Gump Strauss Hauer & Feld LLP, Washington, DC, argued for defendant-appellee. Also represented by PATRICK KLEIN, JOHN M. PETERSON, Neville Peterson LLP, New York, NY; RICHARD F. O'NEILL, Seattle, WA.

Before PROST, SCHALL, and HUGHES, *Circuit Judges*.

SCHALL, *Circuit Judge*.

On July 15, 2019, the United States brought an action in the United States Court of International Trade against Katana Racing, Inc. ("Katana"). In that action, the government sought to recover unpaid customs duties and fees pursuant to the Tariff Act of 1930, 19 U.S.C. § 1592(d). J.A. 89–94. Instead of answering the complaint, on August 30, 2019, Katana filed a motion to dismiss pursuant to United States Court of International Trade Rule ("CIT Rule") 12(b). Among other things, Katana asserted that the complaint should be dismissed pursuant to CIT Rule 12(b)(1) for lack of jurisdiction because the government had filed suit after the statute of limitations set forth at 19 U.S.C. § 1621 had run. Katana stated that, although it had signed a waiver of the statute of limitations on October 25, 2016, it had revoked the waiver prior to the expiration of the limitations period. J.A. 242–45. In a decision dated March 28, 2022, the Court of International Trade found that Katana had properly revoked its October 25, 2016 waiver of the statute of limitations. As a result, the court held that the government's suit was untimely, and it dismissed the suit pursuant to CIT Rule 12(b)(1) for lack of jurisdiction. *United States v. Katana Racing, Inc.*, 569 F. Supp. 3d 1296, 1314 (Ct. Int'l Trade 2022).

The government now appeals. For the reasons set forth below, we hold that the Court of International Trade erred in dismissing the

government's suit for lack of jurisdiction. We therefore reverse the court's decision and remand the case to the court for further proceedings.

BACKGROUND

I

The facts pertinent to this appeal are set forth in the government's complaint. *See Bioparques de Occidente, S.A. de C.V. v. United States*, 31 F.4th 1336, 1343 (Fed. Cir. 2022) ("At the motion to dismiss stage, we 'must accept well-pleaded factual allegations as true and must draw all reasonable inferences in favor of the claimant.'" (quoting *Hutchison Quality Furniture, Inc. v. United States*, 827 F.3d 1355, 1359 (Fed. Cir. 2016))).

Katana, a California-based distributor of high-end wheels and tires, was the importer of record for 386 entries of passenger vehicle and light truck tires from China between November 24, 2009, and August 7, 2012. J.A. 89–91. For those 386 entries, Katana supplied U.S. Customs and Border Protection ("Customs" or "CBP") with invoices that listed prices lower than what Katana actually paid its Chinese vendors. *Id*. at 91. Due to this error, Katana undercalculated the amount of safeguard duties, regular customs duties, harbor maintenance fees, and merchandise processing fees it owed Customs by $5,742,483.80. *Id*. On June 20, 2019, Customs issued a demand to Katana for the unpaid duties and fees. *Id*. at 93.

As noted, on July 15, 2019, the government filed suit against Katana for unpaid customs duties and fees "[b]ased on its violation of 19 U.S.C. § 1592(a) and under 19 U.S.C. § 1592(d)." *Id*. at 93–94. According to the government, "Katana did not exercise reasonable care to ensure that [the 386 entries at issue] . . . reflected accurate values of the merchandise, and thus Katana violated 19 U.S.C. § 1592(a)." *Id*. at 92.[1]

Although filed outside the statute of limitations time period set forth at 19 U.S.C. § 1621, the government's complaint stated that it was timely because Katana had executed three consecutive waivers of

[1] Section 1592(a) provides:

> [N]o person, by fraud, gross negligence, or negligence . . . may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of (i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or (ii) any omission which is material[.]

Section 1592(d) states that "if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of [§ 1592(a)], the Customs Service shall require that such lawful duties, taxes, and fees be restored, whether or not a monetary penalty is assessed." Section 1592(c) of 19 U.S.C. sets forth "[m]aximum penalties" for violations of § 1592(a).

the statute of limitations. In the last of these waivers, dated October 25, 2016, Katana indicated that the statute of limitations would be waived for a period "up to and including July 15, 2019," the date the government filed suit. *Id*. at 90 (quoting J.A. 173).

II

As noted, on August 30, 2019, Katana moved to dismiss the government's action under CIT Rule 12(b). J.A. 204–05. Specifically, Katana's motion sought dismissal under CIT Rule 12(b)(6) for "failure to state a claim upon which relief can be granted" and CIT Rule 12(b)(1) for "lack of subject-matter jurisdiction." *Id*. at 204; CIT Rule 12(b). Katana's motion included a statement of facts supported by exhibits other than the pleadings. J.A. 213–21, 215 n.4, 252. In that statement of facts, Katana asserted that it "had been the victim of a pervasive scheme of identity theft, as Chinese vendors had engaged U.S. customs brokers to file entries in Katana's name, without Katana's knowledge or permission." *Id*. at 215.

Although it acknowledged that a CIT Rule 12(b)(6) motion turns on the facts as alleged in the complaint, *id*. at 222, Katana stated that, "[t]o the extent the parties rely on materials outside the pleadings," the Court of International Trade should treat Katana's motion as a motion for summary judgment under CIT Rule 12(d), *id*. at 215 n.4.[2] In its motion, Katana also stated that the court could consider evidence outside the pleadings to establish the predicate facts when considering a CIT Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction. *Id*. at 221–22 (citing *Cedars-Sinai Med. Ctr. v. Watkins*, 11 F.3d 1573, 1583–84 (Fed. Cir. 1993)).

Katana made three main arguments in its motion to dismiss. First, it argued that the government's complaint should be dismissed under CIT Rule 12(b)(6) for failure to state a claim because Customs had never found a violation of 19 U.S.C. § 1592(a). According to Katana, such a finding was a prerequisite to the assessment of penalties under 19 U.S.C. § 1592(c) and the assertion of a claim for unpaid and owed duties under 19 U.S.C. § 1592(d). *Id*. at 222, 228, 232–37. Second, Katana argued that the complaint should be dismissed under CIT Rule 12(b)(6) because Customs was required to exhaust the administrative procedures set forth in 19 U.S.C. § 1592(b) before it could

[2] CIT Rule 12(d) provides that "[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56."

lawfully determine that a violation of § 1592(a) had occurred, which it failed to do. *Id*. at 237–42.[3]

Katana's third argument was that the government's suit was untimely and should be dismissed under CIT Rule 12(b)(1) because Katana had revoked its final waiver of the statute of limitations. *Id*. at 242–49. Katana asserted that it had agreed to three different waivers of the statute of limitations "[a]t CBP's request, and in order to obtain the benefit of orderly administrative proceedings regarding any violations which might be asserted." *Id*. at 243 (internal quotation marks omitted). Katana argued that it properly revoked the third waiver of the statute of limitations on June 26, 2019, because, contrary to representations that Customs had made to it, Customs never undertook the administrative proceedings contemplated by § 1592(b) to determine the validity of Katana's claim that it had been the victim of identity theft. *Id*. at 243–49.

Responding first to Katana's arguments for dismissal under CIT Rule 12(b)(6), the government argued that Customs need not have established a violation of § 1592(a) to bring suit. Instead, the government contended, it needed only to allege a violation of § 1592(a) in its complaint. J.A. 697. Next, the government urged that Customs need not have followed the administrative process outlined in § 1592(b) to establish such a violation of § 1592(a) prior to filing suit under § 1592(d). *Id*. at 693–97. In making this argument, the government cited this court's decisions in *United States v. Blum*, 858 F.2d 1566 (Fed. Cir. 1988), *United States v. Inn Foods, Inc*., 560 F.3d 1338 (Fed. Cir. 2009), and *United States v. Jac Natori Co*., 108 F.3d 295 (Fed. Cir. 1997), as well as the decisions of the Court of International Trade in *United States v. Aegis Security Insurance Co*., 301 F. Supp. 3d 1359 (Ct. Int'l Trade 2018), *United States v. Nitek Electronics, Inc*., 844 F. Supp. 2d 1298 (Ct. Int'l Trade 2012), *aff'd on other grounds*, 806 F.3d 1376 (Fed. Cir. 2015), *United States v. Aegis Security Insurance Co*., 398 F. Supp. 2d 1354 (Ct. Int'l Trade 2005), and *United States v. Ross*, 574 F. Supp. 1067 (Ct. Int'l Trade 1983). J.A. 694–98. According to the government, these cases stand for the proposition that § 1592(d) creates an independent cause of action for unpaid duties that does not require the exhaustion of § 1592(b)'s administrative remedies. *Id*.

The government also disputed Katana's contention that the suit was untimely. Katana's purported justification for revoking its third waiver of the statute of limitations was unavailing, the government asserted, because the government did not promise Katana adminis-

[3] Section 1592(b) sets forth procedures that must be followed when the government seeks to collect a penalty for a violation of § 1592(a). These procedures include a pre-penalty notice and a penalty claim. 19 U.S.C. § 1592(b)(1), (2).

trative proceedings in exchange for the waiver. *Id*. at 701–02. In addition, the government argued that Katana should be estopped from revoking its waiver because Customs justifiably relied upon the waiver. *Id*. at 702–04.

III

On March 28, 2022, the Court of International Trade granted Katana's motion to dismiss, reasoning that the suit was "barred by the passage of time." *Katana*, 569 F. Supp. 3d at 1314. The court deemed Katana's June 26, 2019 revocation of its third waiver of the statute of limitations to be effective, accepting Katana's explanation that Customs did not undertake the administrative procedures it had "promised" Katana it would provide. *Id*. at 1305–06, 1308–10, 1312–14. That is, Customs "did not properly exhaust the administrative procedures that it had obliged itself to undertake," the court concluded. *Id*. at 1309. The court also stated that the government could not bring suit against Katana solely because it was the "importer of record" for the 386 entries at issue. *Id*. at 1314. Instead, Customs had to provide "precise reasons for holding a defendant 'responsible' for paying its § 1592(d) duty demand in its complaint." *Id*.

The government has appealed the Court of International Trade's decision. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(5).

DISCUSSION

I

A

On appeal, the government contends that the Court of International Trade erroneously dismissed its suit for lack of jurisdiction pursuant to CIT Rule 12(b)(1). First, the government argues that the statute of limitations set forth at 19 U.S.C. § 1621 is not jurisdictional. Rather, it is an affirmative defense that, at the pleading stage, must be adjudicated based on the well-pleaded facts in the complaint. Appellant's Br. 15; Reply Br. 1–8. In this vein, the government urges that the court erred when it held that Katana's statute of limitations waiver was properly revoked. While acknowledging that misconduct could render a statute of limitations waiver void, the government asserts that no such misconduct was alleged here and that Katana's waiver was a voluntary, unilateral action that the government relied upon. Therefore, it was irrevocable. Appellant's Br. 15–21 (citing *United States v. Ford Motor Co*., 497 F.3d 1331, 1336–37 (Fed. Cir. 2007)); Reply Br. 9–16. The government also argues that, even as-

suming a statute of limitations waiver can be revoked, equitable estoppel prevents Katana from revoking its waiver here. Appellant's Br. 21–26.

The government next argues that the Court of International Trade erroneously determined that Customs had failed to exhaust administrative procedures before issuing a duty demand. The government points to § 1592(b), which, by its own terms, only applies to penalty claims for violations of § 1592(a), as opposed to restoration of "lawful duties" under § 1592(d). *Id*. at 26–28. The government also relies on *Blum*, where we recognized that § 1592(d) provides an independent cause of action to recover lost import duties even against parties who did not themselves violate § 1592(a). *Id*. at 29 (citing *Blum*, 858 F.2d at 1568–69). "Accordingly," the government argues, "the Government may bring a non-penalty action for duties under [§]1592(d) without first undertaking the administrative procedures necessary to find that Katana, itself, violated [§]1592(a)." *Id*. at 30 (citing *Ross*, 574 F. Supp. at 1069).

Finally, the government argues that the court "erred by holding that Katana's status as importer of record was not sufficient to state a claim under [§]1592(d)." *Id*. at 32; *see also id*. at 31–33. The government contends that the court erred by engaging in fact-finding in connection with Katana's "identity theft" defense, which the government states is not appropriate at the CIT Rule 12(b)(6) stage. *Id*. at 33–35.

B

Katana's position has evolved in the course of this appeal. In its responding brief, Katana argued that the Court of International Trade correctly determined that it lacked jurisdiction because the government's suit was untimely. Appellee's Br. 14–15, 43. Katana asserted that the statute of limitations waiver was procured by deception, specifically, Customs' false promise of the administrative proceedings required by § 1592(b), and that therefore it was in fact "void," as opposed to "revoked." *Id*. at 22; *see also id*. at 12–13, 15–30. Katana's brief asserted that the court did not issue an appealable decision on Katana's CIT Rule 12(b)(6) motion, *id*. at 15–16, 23 n.24, 30–32, and that therefore "[t]he sole focus of this appeal should be on the CIT's dismissal based on untimeliness," *id*. at 31. In the alternative, Katana argued that the government's complaint did not assert a violation of § 1592(a) and therefore failed to state a claim upon which relief could be granted. *Id*. at 39–43.

At oral argument, however, Katana agreed with the government that, to the extent the Court of International Trade dismissed the

government's suit for lack of jurisdiction, it erred. Oral Arg. at 13:00–14:21, 20:50–21:15 https://oralarguments.cafc.uscourts.gov/default.aspx?fl=22–1832_06072023.mp3 ("[W]e don't dispute that [the statute of limitations waiver issue] is, in fact, not jurisdictional, so I think we're on the same page with the government there."). Katana also agreed with the government that Customs was not required by statute to follow the administrative procedures in 19 U.S.C. § 1592(b) in order to assert a claim for unpaid and owed duties under 19 U.S.C. § 1592(d). *Id*. at 14:20–50, 26:40–50 (agreeing that § 1592(b) procedures were not required).[4] Instead, Katana argued that the Court of International Trade issued an appealable decision on Katana's CIT Rule 12(b)(6) motion and that we should affirm the court's dismissal on that basis. *Id*. at 16:45–17:55. That is, Katana urged at oral argument that the government's complaint should be dismissed for failure to state a claim pursuant to CIT Rule 12(b)(6) because it lacks factual allegations supporting Katana's culpability under § 1592(a). *Id*. at 13:00–14:20, 14:45–20:38. Katana acknowledges that the Court of International Trade improperly considered extrinsic evidence in rendering what Katana now says was a CIT Rule 12(b)(6) decision. It argues, however, that this error was harmless because the government had affirmatively indicated to the court that it did not object to consideration of the exhibits Katana had attached to its motion to dismiss. *Id*. at 21:15–23:00 (quoting J.A. 689 n.1), 24:50–26:05.

II

At times the Court of International Trade's decision appears to interweave analyses under CIT Rules 12(b)(6) for failure to state a claim and 12(b)(1) for lack of subject matter jurisdiction. *See, e.g., Katana*, 569 F. Supp. 3d at 1300 (discussing CIT Rule 12(b)(6) in the context of challenges to subject matter jurisdiction), 1308 ("[T]he question here is whether plaintiff's complaint fails to state a claim for which relief can be granted, which implicates the circumstances that would permit a company to revoke its waiver of the relevant statute of limitations . . . pertaining to a customs duty matter."), 1314 ("The complaint's reliance on that duty demand thus fails to 'state[] a claim to relief that is plausible on its face[,]' given the facts as presented now herein." (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009))). At the end of the day, however, it is clear that the basis for the court's

[4] Katana's appeal brief also had conceded that § 1592(b) procedures are not administrative remedies whose exhaustion is required before a suit may be brought to recover withheld duties. Appellee's Br. 27 n.27 (citing *Blum*, 858 F.2d 1566).

dismissal was CIT Rule 12(b)(1). After first noting that Katana had moved to dismiss pursuant to both rules, the court indicated that "[c]onsideration of the parties' positions persuades the court that *it lacks jurisdiction* over this matter." *Id*. at 1299 (emphasis added). In addition, the court observed that it considered subject matter jurisdiction to be of primary concern since, "if subject matter jurisdiction is lacking, then there can be no adjudication on the merits." *Id*. at 1300 (citation omitted). Finally, the court concluded its decision with the following statement: "[Katana] has provided reasonable justification for its revocation of its last [statute of limitations waiver], with the result that this action is now barred by the passage of time." *Id*. at 1314. This was the basis for Katana's motion to dismiss under CIT Rule 12(b)(1). *See* J.A. 242–49. We therefore agree with Katana's original position that the court did not issue an appealable decision on Katana's CIT Rule 12(b)(6) motion and, instead, dismissed the suit for lack of jurisdiction under CIT Rule 12(b)(1). We review such a decision de novo. *Hutchison*, 827 F.3d at 1359.

As we have previously held, the statute of limitations set forth at 19 U.S.C. § 1621 is not a jurisdictional time limit. *See United States v. Hitachi Am., Ltd*., 172 F.3d 1319, 1334 (Fed. Cir. 1999) (reversing a decision by the Court of International Trade and holding that the statute of limitations under § 1621 could be waived because it was not jurisdictional). Instead, it provides "an affirmative defense" that "can be waived . . . either by not raising it or by agreeing before trial not to assert it." *Id*. (citations omitted); *cf. Ford*, 497 F.3d at 1337 ("We hold that Ford's tenth waiver was an express, voluntary, and unilateral act that alone was sufficient to extend the § 1621 statute of limitations period until April 7, 2005."). In addition, a statute of limitations waiver, which is tantamount to a "consensual extension of the limitations period," *United States v. Inn Foods, Inc*., 383 F.3d 1319, 1322 (Fed. Cir. 2004), serves to preclude the defendant from raising the statute of limitations as an affirmative defense. Our prior conclusion that § 1621 is not jurisdictional is consistent with recent decisions of the Supreme Court addressing similar statutes. *See Wilkins v. United States*, 598 U.S. ___, ___, 143 S. Ct. 870, 875–81 (2023) (concluding that the Quiet Title Act's 12-year statute of limitations, 28 U.S.C. § 2409a(g), is not jurisdictional); *United States v. Wong*, 575 U.S. 402, 408–12 (2015) (holding that the statute of limitations for the Federal Tort Claims Act, 28 U.S.C. § 2401, is not jurisdictional and therefore is subject to equitable tolling, explaining that "Congress must do something special, beyond setting an exception-free deadline, to tag a statute of limitations as jurisdic-

tional and so prohibit a court from tolling it."); *cf. John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133–39 (concluding that the statute of limitations under the Tucker Act, 28 U.S.C. § 2501, is jurisdictional due to the Supreme Court's "definitive earlier interpretation" of the statute as being of a "more absolute nature"). We therefore concur with the parties that the Court of International Trade erred in dismissing the government's suit for lack of jurisdiction under CIT Rule 12(b)(1).

Because the Court of International Trade erred in dismissing for lack of jurisdiction, we reverse the court's decision and remand the case to the court for further proceedings. *See Ford Motor Co. v. United States*, 635 F.3d 550, 558 (Fed. Cir. 2011) (reversing the dismissal of a claim for lack of subject matter jurisdiction and remanding after determining that the Court of International Trade's decision was based on a requirement that was not jurisdictional).[5] On remand, Katana will be able to assert as an affirmative defense its claim that its third statute of limitations waiver was void.[6] And of course, on remand Katana also will be entitled to assert any and all defenses to the government's claim for unpaid duties. We note however that, on remand, Katana will not be able to argue that Customs was required by statute to follow the penalty assessment procedures set forth in 19 U.S.C. § 1592(b). As the government argues and as Katana recognizes, such procedures were not statutorily required. Section 1592(b) provides the applicable procedures for issuing a pre-penalty and penalty notice in the event the government seeks to collect *penalties* for a violation of § 1592(a). In contrast, § 1592(d) explains that "the Customs Service shall require that . . . lawful duties, taxes, and fees be restored, *whether or not a monetary penalty is assessed*." 19 U.S.C. § 1592(d) (emphasis added). Thus, when a penalty is not assessed, as here, the statute does not mandate the performance of the procedures under § 1592(b). *See Ross*, 574 F. Supp. at 1069 ("Section 1592(d), taken at face-value, demonstrates that the United States need not

[5] Because it was not the basis for the Court of International Trade's decision, and because it contradicts Katana's own original position in this appeal, we decline to accept Katana's belated invitation to address the sufficiency of the complaint in the first instance on appeal. Instead, on remand Katana may renew its motion to dismiss under CIT Rule 12(b)(6) or seek summary judgment.

[6] The waiver of an applicable statute of limitations is not a contract, but instead a voluntary, unilateral action that, once executed, may be relied upon by the government and therefore cannot be revoked. *Ford*, 497 F.3d at 1336; *Stange v. United States*, 282 U.S. 270, 276 (1931). Without expressing any view on the matter, we do not foreclose, however, Katana's argument that its third waiver was induced by affirmative misconduct by Customs. *See Heckler v. Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 60–61 & n.12 (1984); *United States v. Ford Motor Co.*, 463 F.3d 1267, 1279 (Fed. Cir. 2006) ("[E]stoppel is available against government actors only in cases involving affirmative misconduct." (internal quotation marks and citations omitted)).

follow the elaborate penalty procedures when pursuing a duty claim."); 19 C.F.R. Part 171, Appx. B, section J (noting that, where "issuance of a penalty under [§ 1592] is not warranted," but that "circumstances do warrant issuance of a demand for payment of an actual loss of duty pursuant to [§ 1592(d)]," Customs should follow the procedures set forth at 19 C.F.R. § 162.79b); 19 C.F.R. § 162.79b (requiring "written notice to the person of the liability for the actual loss of duties, taxes and fees or actual loss of revenue," "in any case in which a monetary penalty is not assessed or a written notification of claim of monetary penalty is not issued").[7]

CONCLUSION

For the foregoing reasons, the decision of the Court of International Trade is reversed. The case is remanded to the court for further proceedings consistent with this opinion.[8]

REVERSED AND REMANDED

COSTS

No costs.

[7] Indeed, the Court of International Trade acknowledged that "generalized case law indicates that collection of unpaid duties does not require the elaborate administrative procedures of § 1592(b)(1)." *Katana*, 569 F. Supp. 3d at 1314 (internal quotation marks omitted).

[8] At oral argument, the parties informed us that pages 165–69 and 177–99 were inadvertently included in the Appendix. Accordingly, at the request of the parties, we have disregarded those pages. *See* Oral Arg. at 10:50–11:52, 12:20–58.

U.S. Court of International Trade

Slip Op. 23–111

DIAMOND TOOLS TECHNOLOGY LLC, Plaintiff, v. UNITED STATES, Defendant, and DIAMOND SAWBLADES MANUFACTURERS' COALITION, Defendant-Intervenor.

Before: Timothy M. Reif, Judge
Court No. 20–00060

JUDGMENT

Before the court is the second remand redetermination of U.S. Customs and Border Protection ("Customs"), issued pursuant to the court's order in *Diamond Tools Tech. LLC v. United States* ("*Diamond II*"), 46 CIT __, 609 F. Supp. 3d 1378 (2022). Final Remand Redetermination Pursuant to Court Remand, ECF No. 92 ("Remand Results").

On April 17, 2023, plaintiff Diamond Tools Technology LLC ("DTT USA" or "plaintiff") filed comments in response to the Remand Results. Pl.'s Cmts. Opp'n to Final Results of Second Redetermination, ECF No. 97. On April 17, 2023, defendant-intervenor Diamond Sawblades Manufacturers' Coalition filed comments in response to the Remand Results. Def.-Intervenor's Cmts. Opp'n to Second Redetermination, ECF No. 96. On May 26, 2023, defendant United States filed a reply to plaintiff's and defendant-intervenor's comments on the Remand Results. Def.'s Reply to Pl.'s and Def.-Intervenor's Cmts. on Second Redetermination, ECF No. 98. On May 26, 2023, plaintiff filed further comments in support of the Remand Results. Pl.'s Resp. Cmts. Supp. of Final Results of Second Redetermination, ECF No. 99. The court reviewed parties' filings and responses thereto.

In *Diamond I*, the court remanded in part Customs' affirmative finding of evasion of the antidumping duty order in Customs' Final Determination as to Evasion and Final Administrative Decision on Certain Diamond Sawblades and Parts Thereof from the People's Republic of China ("China"). *Diamond Tools Tech. LLC v. United States* ("*Diamond I*"), 45 CIT __, 545 F. Supp. 3d 1324 (2021) (citing Customs' Trade Remedy & Law Enforcement Directorate Final Determination as to Evasion, EAPA Case No. 7184 (Sept. 17, 2019), CR 199, PR 220; and Customs' Office of Regulations & Rulings Decision on Request for Admin. Review, EAPA Case No. 7184 (Jan. 29, 2020), PR 232). The court ordered Customs to make a finding and explain its reasoning as to whether DTT USA "enter[ed] covered merchandise . .

. by means of any . . . act that is material and false, or any omission that is material," pursuant to the second statutory requirement set forth in the Enforce and Protect Act ("EAPA"), section 517(a)(5)(A) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1517(a)(5)(A) (2018). *See Diamond I*, 45 CIT at __, 545 F Supp. 3d at 1356. In *Diamond II*, the court concluded that Customs did not explain how DTT USA's statement was material and false when DTT USA relied on the directive issued by Commerce and remanded:

> Customs' Remand Results to Customs for reconsideration in conformity with this court's opinion. The court direct[ed] Customs to reconsider its conclusion consistent with this decision and the facts of this case and, in particular, the applicability of the EAPA in the confined circumstance of an importer's reliance on Commerce's clear directive.

Diamond II, 46 CIT at __, 609 F. Supp. 3d at 1391. In the Remand Results, Customs determined "under respectful protest" that plaintiff DTT USA "did not evade the AD Order when it imported diamond sawblades assembled in Thailand with Chinese cores and segments, prior to December 2017." Remand Results at 2. Customs stated:

> Consistent with the Court's reasoning in *Diamond Tools II*, under respectful protest, we find that, in light of the Court's interpretation of Commerce's 2006 IDM, DTT did not make false statements with respect to its pre-December 1, 2017 entries, and thus did not engage in evasion when it entered diamond sawblades assembled in Thailand with Chinese components into the United States without declaring such merchandise as subject to the AD Order.

Id. at 7.

Upon consideration of the Remand Results, the parties' submissions and the papers and proceedings had herein, it is hereby

ORDERED that the Remand Results are sustained.

Dated: July 28, 2023
New York, New York

/s/ Timothy M. Reif
TIMOTHY M. REIF, JUDGE

Slip Op. 23–112

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

Before: Timothy M. Reif, Judge
Court No. 22–00160

ORDER

Before the court are the final results of the 2019–2020 administrative review by the U.S. Department of Commerce ("Commerce") of the antidumping duty ("AD") order on circular welded non-alloy steel pipe from the Republic of Korea. *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of no Shipments; 2019–2020* ("*Final Results*"), 87 Fed. Reg. 26,343 (Dep't of Commerce May 4, 2022) and accompanying Issues and Decision Memorandum ("IDM") (Dep't of Commerce Apr. 26, 2022). Wheatland Tube ("plaintiff") moves for judgment on the agency record pursuant to Rule 56.2 of the U.S. Court of International Trade (the "Court") and challenges Commerce's decision in the Final Results to grant a constructed export price ("CEP") offset to Hyundai Steel Company ("Hyundai Steel") and Husteel Co., Ltd. ("Husteel") (collectively, the "mandatory respondents") in calculating their respective AD margins. Pl. Wheatland Tube's Mot. for J. on the Agency R. Pursuant to Rule 56.2, ECF No. 38. The United States ("defendant") as well as Hyundai Steel, Husteel, NEXTEEL Co., Ltd. and SeAH Steel Corporation oppose plaintiff's motion. Def.'s Resp. to Pl.'s Rule 56.2 Mot. for J. on the Agency R., ECF No. 39; Resp. Br. of Def.-Intervenor Husteel Co., Ltd. in Opp'n to Pl. Wheatland Tube Co.'s Mot. for J. upon the Agency R., ECF No. 40; Resp. of Def.-Intervenor, Hyundai Steel Co., in Opp'n to Pl.'s Rule 56.2 Mot. for J. on the Agency R., ECF No. 41; Def. Intervenor NEXTEEL Co., Ltd.'s Resp. to Pl.'s Rule 56.2 Mot. for J. on the Agency R., ECF No. 42; Br. of SeAH Steel Corp. in Resp. to Pl.'s Rule 56.2 Mot. for J. on the Agency R., ECF No. 43.

For the following reasons, the court remands Commerce's decision in the Final Results to grant a CEP offset to the mandatory respondents.

BACKGROUND

On May 4, 2022, Commerce published the Final Results, in which Commerce decided to grant a CEP offset to the mandatory respondents. *Final Results*, 87 Fed. Reg. 26,343; IDM at 13–14. Commerce reached this decision notwithstanding Commerce's finding that nei-

ther mandatory respondent had provided "an adequate quantitative analysis" in response to Commerce's request for information. IDM at 13. Specifically, Commerce stated that neither mandatory respondent had "provided an adequate quantitative analysis of the differences in levels of intensity" with respect to "the selling activities reported in [each mandatory respondent's] selling functions chart." *Id.* Commerce stated also that neither mandatory respondent had "provided an analysis showing how expenses assigned to sales at different claimed [levels of trade] impacted price comparability." *Id.*

Notwithstanding the foregoing inadequacies that Commerce identified with respect to the "quantitative analyses" of the mandatory respondents, Commerce decided to grant the requested CEP offsets on the basis that Commerce had failed to "inform" the mandatory respondents that Commerce "required more information" in their respective submissions. *Id.* at 13–14. Commerce explained specifically that it had not provided the mandatory respondents with an "opportunity, pursuant to [19 U.S.C. § 1677m(d)], to remedy any deficiency in their quantitative analyses by providing additional information in a supplemental questionnaire response." *Id.* at 14; section 782(d) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1677m(d) (2018).[1] Commerce stated that "[f]or this reason" — i.e., Commerce's failure to comply with its obligations set forth in 19 U.S.C. § 1677m(d) — Commerce would "accept[] both [mandatory] respondents' information as sufficient" and "grant[] a CEP offset to both [mandatory] respondents . . . ." IDM at 14.

On May 27, 2022, plaintiff commenced the instant case, in which the court held oral argument on June 8, 2023. Oral Arg., ECF No. 51. On June 9, 2023, the court ordered the parties to "show cause, if there be any, that the court not remand Commerce's decision in the instant case in view of Commerce's statutory obligations set forth in 19 U.S.C. § 1677m(d) . . . ." Order to Show Cause, ECF No. 52. Thereafter, plaintiff, defendant and Hyundai Steel each responded to the court's order. Pl. Wheatland Tube's Resp. to the Ct.'s Order to Show Cause ("Pl. Resp."), ECF No. 56; Def.'s Resp. to Order to Show Cause ("Def. Resp."), ECF No. 55; Resp. of Def.-Intervenor, Hyundai Steel Co., to the Ct.'s Order to Show Cause ("Hyundai Steel Resp."), ECF No. 57. Plaintiff stated in its response that it "does not in principle disagree with the Court remanding" Commerce's decision in the Final Results to grant a CEP offset to the mandatory respondents, but requested

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

that "the Court explain the particular features of this case that support [such an] action." Pl. Resp. at 1. Defendant stated in its response:

> Notwithstanding counsel's argument (during the oral argument conducted by the Court on June 8, 2023) that the Court should sustain [Commerce's] final results, *the United States does not oppose the Court's proposed remand of this action* to Commerce for the purpose of the agency's reconsideration of its determination to grant a [CEP] offset to the mandatory respondents . . . .

Def. Resp. at 1 (emphasis supplied). Defendant stated further that it would not oppose such a remand "for Commerce to . . . fulfill its obligations under 19 U.S.C. § 1677m(d)." *Id.* at 2. Hyundai Steel maintained that the court should sustain Commerce's decision, restating the arguments that Hyundai Steel previously had advanced in opposition to plaintiff's motion for judgment on the agency record. *See* Hyundai Steel Resp. at 5.

JURISDICTION AND STANDARD OF REVIEW

The court exercises subject matter jurisdiction pursuant to 28 U.S.C. § 1581(c). The court will sustain a determination by Commerce unless the determination is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i).

LEGAL FRAMEWORK

19 U.S.C. § 1677m(d) "provides the procedures Commerce must follow when a party files a deficient submission." *Haixing Jingmei Chem. Prod. Sales Co. v. United States*, 42 CIT __, __ n.9, 308 F. Supp. 3d 1366, 1372 n.9 (2018). In particular, the statute provides:

> (d) DEFICIENT SUBMISSIONS. If [Commerce] determines that a response to a request for information under this subtitle does not comply with the request, [Commerce] shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this subtitle. If that person submits further information in response to such deficiency and either —
>
> (1) [Commerce] finds that such response is not satisfactory, or
>
> (2) such response is not submitted within the applicable time limits,

> then [Commerce] may . . . disregard all or part of the original and subsequent responses.

19 U.S.C. § 1677m(d). Further, Commerce has determined that a submission in response to a request for information is "deficient" if that submission is nonresponsive or "unusable" as to Commerce's request. *See, e.g.*, *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 Fed. Reg. 35,303 (Dep't of Commerce June 2, 2016) and accompanying IDM (Dep't of Commerce May 24, 2016) at sec. VII.A.

Commerce is required to comply with its statutory obligations set forth in 19 U.S.C. § 1677m(d). *Saha Thai Steel Pipe Pub. Co. v. United States*, 46 CIT __, __, 605 F. Supp. 3d 1348, 1361, 1365–66 (2022) ("Having identified . . . deficiencies, Commerce was immediately confronted with its statutory obligation under 19 U.S.C. § 1677m(d) to provide [the respondent] notice and an opportunity to cure."); *Hitachi Energy USA Inc. v. United States*, 34 F.4th 1375, 1378 (Fed. Cir. 2022), *opinion modified on denial of reh'g*, No. 2020–2114, 2022 WL 17175134 (Fed. Cir. Nov. 23, 2022). Moreover, in circumstances in which Commerce has failed to comply with its obligations set forth in 19 U.S.C. § 1677m(d), the Court has remanded the applicable decision so that Commerce "can comply with the requirements" of the statute. *BlueScope Steel Ltd. v. United States*, 45 CIT __, __, 548 F. Supp. 3d 1351, 1363 (2021).

DISCUSSION

The court remands Commerce's decision in the Final Results to grant a CEP offset to the mandatory respondents in view of Commerce's failure to comply with its obligations set forth in 19 U.S.C. § 1677m(d). *Final Results*, 87 Fed. Reg. 26,343. As discussed *supra* Background, Commerce concluded that the submissions of the mandatory respondents — in particular, the "quantitative analyses" contained therein — were not responsive to Commerce's request for information and, consequently, were "deficient" within the meaning of 19 U.S.C. § 1677m(d). IDM at 13–14; 19 U.S.C. § 1677m(d). Notwithstanding this conclusion, Commerce conceded that it had failed to comply with its obligations set forth in 19 U.S.C. § 1677m(d) — a point that Commerce recognized in the IDM and that defendant concedes. *See* IDM at 13–14; Def. Resp. at 2. Specifically, Commerce stated that it had failed to "inform the [mandatory] respondents that [Commerce] required more information" in their respective submissions, which resulted in neither mandatory respondent "ha[ving] an

opportunity, pursuant to [19 U.S.C. § 1677m(d)], to remedy any deficiency in their quantitative analyses by providing additional information in a supplemental questionnaire response." IDM at 13–14.

Consequently, in view of Commerce's failure in the instant case to comply with its obligations set forth in 19 U.S.C. § 1677m(d), *see id.*, the court remands Commerce's decision in the Final Results to grant a CEP offset to the mandatory respondents. *See BlueScope Steel*, 45 CIT at __, 548 F. Supp. 3d at 1362–63; *Saha Thai*, 46 CIT at __, 605 F. Supp. 3d at 1371.

* * *

For the reasons discussed, the court remands Commerce's decision in the Final Results to grant a CEP offset to the mandatory respondents.

Accordingly, it is hereby

ORDERED that Commerce's decision in the Final Results to grant a CEP offset to the mandatory respondents is remanded for reconsideration, consistent with this Order; it is further

ORDERED that, on remand, Commerce shall comply with its obligations set forth in 19 U.S.C. § 1677m(d) — namely, to provide the mandatory respondents with: (1) notice of the "nature" of any deficiencies that Commerce identified in their respective submissions; and (2) "to the extent practicable . . . an opportunity to remedy or explain the deficienc[ies]," 19 U.S.C. § 1677m(d); it is further

ORDERED that Commerce shall file its remand results within 90 days following the date of this Order; it is further

ORDERED that within 14 days of the date of filing of Commerce's remand results, Commerce shall file an index and copies of any new administrative record documents; and it is further

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

SO ORDERED.

Dated: August 3, 2023
New York, New York

/*s*/ *Timothy M. Reif*
JUDGE

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