U.S. Customs and Border Protection

19 CFR PART 12

CBP DEC. 24–01

RIN 1515–AE87

EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON CERTAIN ARCHAEOLOGICAL MATERIAL FROM CHINA

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to extend import restrictions on certain archaeological material from China. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has made the requisite determinations for extending the import restrictions, which were originally imposed by CBP Dec. 09–03 and last extended by CBP Dec. 19–02. Accordingly, these import restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to reflect this further extension through January 14, 2029.

DATES: Effective January 14, 2024.

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

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (CPIA), which implements the 1970 United Nations Educational, Scientific and Cultural Organization

(UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)) (the Convention), allows for the conclusion of an agreement between the United States and another party to the Convention to impose import restrictions on eligible archaeological and ethnological materials. Under the CPIA and the applicable U.S. Customs and Border Protection (CBP) regulations, found in § 12.104 of title 19 of the Code of Federal Regulations (19 CFR 12.104), the restrictions are effective for no more than five years beginning on the date on which an agreement enters into force with respect to the United States (19 U.S.C. 2602(b)). This period may be extended for additional periods, each extension not to exceed five years, if it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); 19 CFR 12.104g(a)).

On January 14, 2009, the United States entered into a bilateral agreement with the People's Republic of China (China) to impose import restrictions on certain archaeological material representing China's cultural heritage from the Paleolithic Period (c. 75,000 B.C.) through the end of the Tang Period (A.D. 907), and monumental sculpture and wall art at least 250 years old. On January 16, 2009, CBP published a final rule (CBP Dec. 09–03) in the **Federal Register** (74 FR 2838), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions, including a list designating the types of archaeological materials covered by the restrictions.

The import restrictions were subsequently extended two more times in accordance with 19 U.S.C. 2602(e) and 19 CFR 12.104g(a), and the designated list was amended once. On January 13, 2014, CBP published a final rule (CBP Dec. 14–02) in the **Federal Register** (79 FR 2088), which amended § 12.104g(a) to reflect the extension of these import restrictions for an additional five years. By request of China, this document also amended the Designated List to clarify that the restrictions as to monumental sculpture and wall art at least 250 years old were to be calculated as of January 14, 2009, the date the agreement became effective.

Subsequently, on January 10, 2019, the United States and China entered into a new memorandum of understanding (2019 MOU), that superseded and replaced the prior agreement, extending the import restrictions for an additional five years. The new MOU added a new subcategory of glass objects from the Zhou period through the Tang period and revised the Designated List of cultural property described in CBP Dec. 14–02. On January 14, 2019, CBP published a final rule (CBP Dec. 19–02) in the **Federal Register** (84 FR 107), which amended § 12.104g(a) to reflect the extension of these import restric-

tions for an additional five years and amended the Designated List to include the new subcategory of glass objects from the Zhou period through the Tang Period. These import restrictions are due to expire on January 14, 2024.

On May 19, 2023, the United States Department of State proposed in the **Federal Register** (88 FR 32264) to extend the 2019 MOU. On November 14, 2023, after considering the views and recommendations of the Cultural Property Advisory Committee, the Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State, made the necessary determinations to extend the import restrictions for an additional five years. Following an exchange of diplomatic notes, the United States Department of State and the Government of the People's Republic of China have agreed to extend the restrictions for an additional five-year period, through January 14, 2029.

Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of these import restrictions. The restrictions on the importation of archaeological material from China will continue in effect through January 14, 2029. Importation of such material from China continues to be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

The Designated List and additional information may also be found at the following website address: *https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/current-import-restrictions* by selecting the material for "China."

Inapplicability of Notice and Delayed Effective Date

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

Executive Orders 12866 and 13563

Executive Orders 12866 (as amended by Executive Order 14994) and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Orders 12866 and 13563 because it pertains to a foreign affairs function of the United States, as described above,

and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and, by extension, Executive Order 13563.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Signing Authority

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

Troy A. Miller, the 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 for CBP, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 12

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

Amendment to the CBP Regulations

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

PART 12—SPECIAL CLASSES OF MERCHANDISE

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

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

* * * * *

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

* * * * *

■ 2. In § 12.104g, amend the table in paragraph (a) by revising the entry for the People's Republic of China to read as follows:

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

(a) * * *

State party	Cultural property	Decision No.
* * * * * * *		
People's Republic of China.	Archaeological materials representing China's cultural heritage from the Paleolithic Period (c. 75,000 B.C.) through the end of the Tang Period (A.D. 907) and monumental sculpture and wall art at least 250 years old as of January 14, 2009.	CBP Dec. 19–02, extended by CBP Dec. 24–01.
* * * * * * *		

* * * * *

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

Approved:

THOMAS C. WEST, JR.,
Deputy Assistant Secretary of the Treasury for Tax Policy.

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF BUMPER ENERGY ABSORBERS, BUMPER EXTENSIONS, AND BUMPER REINFORCEMENTS

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

ACTION: Notice of modification of one ruling letter and of revocation of treatment relating to the tariff classification of bumper energy absorbers, bumper extensions, and bumper reinforcements.

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) is modifying one ruling letter concerning tariff classification of bumper energy absorbers, bumper extensions, and bumper reinforcements under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 57, No. 33, on September 13, 2023. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 25, 2024.

FOR FURTHER INFORMATION CONTACT: Patricia Fogle, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0061.

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. 57, No. 33, on September 13, 2023, proposing to modify one ruling letter pertaining to the tariff classification of combination automobile ice scraper, squeegee, and bristle brush with a detachable handle. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter ("NY") N302213, dated February 14, 2019, CBP classified a combination bumper energy absorbers, bumper extensions, and bumper reinforcements in heading 8708, HTSUS, specifically in subheading 8708.29.51, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other." CBP has reviewed NY N302213 and has determined the ruling letter to be in error. It is now CBP's position that bumper energy absorbers, bumper extensions, and bumper reinforcements are properly classified, in heading 8708, HTSUS, specifically in subheading 8708.10.60, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Bumpers and parts thereof: Parts of bumpers."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N302213 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H313099, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

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

Attachment

HQ H323227
January 8, 2024
OT:RR:CTF:EMAIN H323227 PF
CATEGORY: Classification
TARIFF NO.: 8708.10.60

PAULA MESSER
AUTONATION, INC
200 SW 1ST AVENUE, SUITE 1100
FORT LAUDERDALE, FL 33301

RE: Modification of NY N302213, dated February 14, 2019; Tariff classification of bumper energy absorbers, bumper extensions, and bumper reinforcements

DEAR MS. MESSER:

On February 14, 2019, U.S. Customs and Border Protection ("CBP") issued to you New York Ruling Letter ("NY") N302213. It concerned the tariff classification of bumper energy absorbers, bumper extensions, and bumper reinforcements under the Harmonized Tariff Schedule of the United States ("HTSUS"). We have reviewed NY N302213 and determined that it is partially in error. For the reasons set forth below, we are modifying that ruling with respect to the classification of bumper energy absorbers, bumper extensions, and bumper reinforcements. The remaining analysis of N302213 remains unchanged.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on September 13, 2023, in Volume 57, Number 33, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In NY N302213, the subject bumper energy absorbers, bumper extensions, and bumper reinforcements were described as follows:

> The bumper energy absorbers are designed to absorb impact in case of a collision, while effectively protecting other components, thus preventing more serious injuries and physical damage to the vehicle's structure. The bumper energy absorbers, which are also called impact absorbers or bumper cores, are constructed of either foam or plastic, and must be replaced if damaged.
>
> The bumper extensions function as a shield of protection to the bumper, which can get easily scratched or chipped when exposed to harsh road elements. They also provide a stylish accent and are placed on the driver's and passenger's sides of the vehicle's front and rear bumpers.
>
> The bumper reinforcements are designed to reinforce the bumper assembly by fortifying and shielding the bumper from severe damage. They also keep the bumper from denting and crumpling, and are composed of either aluminum, steel, or plastic.

In NY N302213, CBP classified the bumper energy absorbers, bumper extensions, and bumper reinforcements in subheading 8708.29.51, HTSUS,

which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other."

ISSUE:

Whether the bumper energy absorbers, bumper extensions, and bumper reinforcements are classified as parts of bumpers of subheading 8708.10.60, HTSUS, or as other auto parts and accessories of subheading 8708.29.51, HTSUS.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation ("GRIs") and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation ("AUSR"). The GRIs and the AUSR are part of the HTSUS and are considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, and any related subheading notes, and mutatis mutandis to the GRIs 1 through 5.

The HTSUS subheadings under consideration are as follows:

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
8708.10	Bumpers and parts thereof:
8708.10.60	Parts of bumpers.
	Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.29.51	Other.

There is no dispute that the subject bumper energy absorbers, bumper extensions, and bumper reinforcements are classified in heading 8708, HTSUS. The issue is in this case is the classification of the bumper energy absorbers, bumper extensions, and bumper reinforcements at the subheading level. As a result, GRI 6 applies. Specifically, before determining whether the instant merchandise is properly classified under the provision for "*other* parts and accessories of bodies (including cabs)" (emphasis added), we must address whether the instant articles constitute "bumpers and *parts thereof*" (emphasis added) of subheading 8708.10.

In NY N302213, CBP stated that the subject energy absorbers were designed to absorb impact in case of a collision, while effectively protecting other components, thereby preventing more serious injuries and physical damage to the vehicle's structure. In addition, the subject bumper extensions functioned as a shield of protection to the bumper. Moreover, the subject

bumper reinforcements were designed to reinforce the bumper assembly by fortifying and shielding the bumper from severe damage and keeping the bumper from denting and crumbling.

Based on the foregoing, we find that the energy absorbers, bumper extensions, and bumper reinforcements absorb impact and provide rigidity and protection to the bumper, which are integral to the function of motor vehicle bumpers. Therefore, they are indeed *prima facie* classifiable under subheading 8708.10.60, HTSUS, as parts of bumpers. Because subheading 8708.10.60 is superior to the provision for "other parts and accessories of bodies (including cabs)", *supra*., there is no need to address whether the instant merchandise falls under the scope of subheading 8708.29. Classification of the instant merchandise in subheading 8708.10.60 is consistent with Headquarters Ruling Letter 964662, dated March 25, 2002, where CBP classified a support assembly that was a piece of steel attached to the rear bumper of a vehicle, which had the purpose of stabilizing a vehicle's rear bumper as a part of a bumper in subheading 8708.10.60, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the bumper energy absorbers, bumper extensions, and bumper reinforcements are classified in heading 8708, HTSUS, specifically subheading 8708.10.60, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Bumpers and parts thereof: Parts of bumpers." The column one, general rate of duty is 2.5 percent *ad valorem*.

Duty rates are subject to change. The text of the most recent HTSUS and the accompany duty rates are provided at www.usitc.gov. A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

EFFECT ON OTHER RULINGS:

NY N302213, dated February 14, 2019, 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,

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

AGENCY INFORMATION COLLECTION ACTIVITIES; EXTENSION; PRIOR DISCLOSURE

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

ACTION: 60-Day notice and request for comments.

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

DATES: Comments are encouraged and must be submitted (no later than March 5, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0074 in the subject line and the agency name. Please use the following method to submit comments:

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

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

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

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

Overview of This Information Collection

Title: Prior Disclosure.

OMB Number: 1651–0076.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with a decrease in annual burden hours.

Type of Review: Extension (w/ change).

Affected Public: Businesses.

Abstract: The Prior Disclosure program establishes a method for a potential violator to disclose to CBP that they have committed an error or a violation with respect to the legal requirements of entering merchandise into the United States, such as underpaid tariffs or duties, or misclassified merchandise, or regarding the payment or credit of any drawback claim. The procedure for making a prior disclosure is set forth in 19 CFR 162.74. This provision requires that respondents submit information about the merchandise involved, a specification of the false statements or omissions, and what the true and accurate information should be. A valid prior disclosure will entitle the disclosing party to the reduced penalties pursuant to 19 U.S.C. 1592(c)(4) or 19 U.S.C. 1593a(c)(3).

The respondents to this information collection are members of the trade community who are familiar with CBP regulations.

The information is to be used by CBP officers to verify and validate the commission of a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a by the disclosing party. A valid prior disclosure will entitle the disclosing party to reduced penalties pursuant to 19 U.S.C. 1592(c)(4) or 19 U.S.C. 1593a(c)(3). A prior disclosure may be submitted orally or in writing to CBP. In the case of an oral disclosure, the disclosing party shall confirm the disclosure in writing within 10 days of the date of the oral disclosure. A written prior disclosure must be addressed to the Commissioner of Customs, have conspicuously printed on the face

of the envelope the words "prior disclosure," and be presented to a Customs officer at the Customs port of entry or a Center of the disclosed violation.

Type of Information Collection:

Estimated Number of Respondents: 762.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 762.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 2,286.

Dated: January 2, 2024.

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

U.S. Court of International Trade

Slip Op. 24–2

CVB, INC., Plaintiff, v. UNITED STATES, Defendant, and BROOKLYN BEDDING, LLC, et al., Defendant-Intervenors.

Before: Stephen Alexander Vaden, Judge
Court No. 1:21-cv-00288 (SAV)

[Denying the Defendant's Joint Motion to Retract the Court's Public Slip Opinion and Accord Confidential Treatment to Alleged Business Proprietary Information Contained Therein.]

Dated: January 8, 2024

Geoffrey M. Goodale, Duane Morris, LLP, of Washington, DC, for Plaintiff CVB, Inc. With him on the briefs were *Andrew R. Sperl*, *Nathan J. Heeter*, and *Lauren E. Wyszomierski*, Duane Morris, LLP, and *Stephen G. Larson*, *Robert C. O'Brien*, and *Paul A. Rigali*, Larson LLP, of Los Angeles, CA.

Jane C. Dempsey, Office of the General Counsel, United States International Trade Commission, of Washington, DC, for Defendant United States. With her on the briefs were *Dominic Bianchi*, General Counsel; *Andrea C. Casson*, Assistant General Counsel for Litigation; and *Brian R. Soiset*, Attorney-Advisor.

Mary Jane Alves, Cassidy Levy Kent (USA) LLP, of Washington, DC, for Defendant-Intervenors Brooklyn Bedding, LLC; Corsicana Mattress Company; Elite Comfort Solutions; FXI, Inc.; Innocor, Inc.; Kolcraft Enterprises, Inc.; Leggett & Platt, Inc.; the International Brotherhood of Teamsters; and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO. With her on the briefs were *Yohai Baisburd* and *Sydney Reed*.

OPINION

Vaden, Judge:

On December 19, 2023, the Court issued a public slip opinion in the underlying case affirming the United States International Trade Commission's (the Commission) affirmative injury finding. *CVB, Inc. v. United States*, 47 CIT __, 2023 Ct. Intl. Trade LEXIS 189, Slip Op. 2023–184. Shortly thereafter, the Commission notified the Court it believed the public opinion contained unredacted business proprietary information. Def.'s Letter, ECF No. 90. Before the Court is the Commission's Joint Motion to Retract the Court's Public Slip Opinion and Accord Confidential Treatment to Business Proprietary Information Contained Therein (Motion to Retract), ECF No. 93. For the reasons set forth below, the Court respectfully **DENIES** the Motion.

BACKGROUND

The underlying case involves a challenge to the Commission's final affirmative injury determination in its investigation of mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam. *See CVB*, 2023 Ct. Intl. Trade LEXIS 189, at *1–2. The Slip Opinion outlined numerous errors by the Commission but found the errors were ultimately harmless and sustained the Commission's final determination. *See id.* at *52. To explain what the Court characterized as the Commission's "mathematical obfuscation and statistical chicanery[,]" the Court illustrated how responses to various questionnaires contained in the record and a chart from the Commission's final determination showed the opposite of what the Commission claimed they did. *See id.* at *30–43.

After the Court released its opinion, the Commission contacted the Court by telephone and email to express concerns that the opinion revealed confidential business proprietary information. The next day, the Commission filed a Letter to the Court on official Commission letterhead requesting that the Court retract its opinion because the Commission "identified business proprietary information" in the opinion. Def.'s letter at 1, ECF No. 90. The Court issued a Paperless Order the same day informing the parties that a written motion was the appropriate way to raise any concerns regarding confidential or business proprietary information. ECF No. 91. After business hours on Friday, December 22, the Commission filed the Joint Motion. Motion to Retract, ECF No. 93.

LEGAL STANDARDS

USCIT Rule 5(g) governs filings containing confidential or business proprietary information. Rule 5(g)'s mandate is as clear as it is broad: "Any paper containing confidential or business proprietary information must identify that information by enclosing it in brackets." The rule serves three purposes. First, the rule protects confidential and business proprietary information by clearly identifying it for the parties and the Court. Second, the rule promotes transparency and public access to judicial records by requiring parties to designate precisely what information is confidential. Parties cannot protect information *en masse* by stamping a label atop every page. Instead, they must excise only that information which is truly confidential, allowing the public to view everything else. *See* USCIT R. 5(g). Finally, the rule promotes judicial efficiency by providing the Court with one record it examines to adjudicate the case. Bracketing allows the Court to look at one place to see the entire record the agency consid-

ered and know what portion of that record the parties claim is confidential without having to move back and forth between different sources.

The Court's rules do not define what constitutes confidential or business proprietary information. 19 U.S.C. § 1677f(b) governs the Commission's treatment of business proprietary information. Information submitted to the Commission "which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information[.]" 19 U.S.C. § 1677f(b)(1)(A). Information is neither confidential nor business proprietary if it is publicly available. *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2363 (2019) (defining confidential information as information that is "private" or "secret") (citing Webster's Seventh New Collegiate Dictionary 174 (1963)); *see also* 19 U.S.C. § 1677f(b)(2) (the Commission can determine a party's designation of information as proprietary is unwarranted based on the information's "nature and extent ... or its availability from public sources"). *Cf. Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1002 (1984) ("Information that is public knowledge ... cannot be a trade secret.") (internal citations omitted).

Merely claiming information is confidential does not make it so. Were that true, a party could designate anything it wanted as confidential. Even when the parties agree to secrecy, courts are "duty-bound to protect public access to judicial proceedings and records." *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 417 (5th Cir. 2021). Where the parties lack any incentive to defend the public's right of access, the Court must balance that right with the need for confidentiality. *Id.* at 419. Transparency — not secrecy — is the default rule. *Id.* at 417.

DISCUSSION

The Motion asks the Court to retract its Slip Opinion and issue a new confidential opinion with forty-four sets of brackets in place of information contained in the original Slip Opinion. *See* Motion to Retract Attach. A, ECF No. 93. The objected-to information falls into two broad categories, company names and numerical approximations. First, the Motion to Retract objects to the Slip Opinion's naming of the companies that responded to the Commission's questionnaires. *See, e.g.*, *id.* at 2–4 (requesting the Court remove the names of various companies). This information is not confidential because the Commission failed to abide by USCIT Rule 5(g) when designating information as confidential or business proprietary. *See id.* at 3 (admitting the cited pages "were not individually bracketed"). Second,

the Motion to Retract objects to the Court's usage of approximations to summarize information the Commission did properly bracket according to USCIT Rule 5(g). *See, e.g.*, *id.* at 1–2 (objecting to various numerical approximations). This portion of the Motion fails because the information is publicly available, the Court's approximations do not "closely track" the Commission's figures as the Motion to Retract suggests, or both. *Id.* at 1. The Motion's motley approach to redaction demonstrates the importance of properly designating information as confidential under USCIT Rule 5(g) and maintaining a consistent approach to what constitutes confidential or business proprietary information. *Compare id.* at 1–2 (objecting to company names and production ratios), *with id.* at 2–3 (objecting to company names but *not* purchase ratios). The Commission can best encourage voluntary cooperation from companies and protect allegedly confidential information by following the rules. *Cf. id.* at 2–3 (explaining why protecting confidential information is important to the Commission).

A. Company Names

The Motion to Retract asks the Court to censor the names of "non-party purchasers that voluntarily provided questionnaire responses"[1] to the Commission. *Id.* at 2. According to the Motion, the Commission views the "entirety of purchaser questionnaire responses, including the identity of those purchasers" as confidential business proprietary information. *Id.* However, the responses to the purchaser questionnaires were not bracketed in accordance with USCIT Rule 5(g), meaning any claim to confidentiality was waived long ago.

USCIT Rule 5(g) requires that "[a]ny paper containing confidential or business proprietary information must identify that information by enclosing it in brackets." Counsel and the parties are responsible for complying with the Court's rules and orders regarding the redaction of sensitive information. *Cf.* In re E-Government Act of 2002 and Privacy Redaction, Admin. Order No. 08–01, at 2 (CIT May 2, 2008, amend. Nov. 25, 2008, eff. Jan. 1, 2009), https://www.cit.uscourts.gov/sites/cit/files/AO-08–01.pdf ("It is the responsibility of counsel and the parties to be sure that all filings comply with the Court's Rules, orders, or notices regarding the redaction of personal data identifiers or other sensitive information."). The Commission admits that it did not bracket the purchaser questionnaires filed with the Court. Motion

[1] Although the Motion to Retract characterizes the responses as voluntary, the questionnaire itself does not. The questionnaire states a response "is mandatory and failure to reply as directed can result in a subpoena or other order to compel the submission of records or information in your firm's possession." Blank "U.S. – Purchaser" Questionnaire at 1, U.S. Int'l Trade Comm'n, https://bit.ly/3vjf04h (last visited Jan. 8, 2024). This is not the only inconsistency between what the Commission represents in the Motion to Retract and what the Commission's own questionnaires say. *See infra* note 4.

to Retract Attach. A at 3, ECF No. 93. The Motion to Retract makes three excuses for this. First, it asserts that the company names were bracketed in the Commission's index to the record. *Id.* Second, it notes that the Commission stamped a "Business Proprietary" label atop the pages of the questionnaires. *Id.* Third, it makes veiled excuses about the length of the administrative record. *See id.* (describing the confidential joint appendix as "voluminous").

The Motion's first excuse is that the Commission bracketed the company names in the index it filed with the confidential joint appendix. This is half true but of no consequence. The index does contain brackets in place of the names of the companies that responded to the questionnaires; but instead of brackets around the purportedly confidential information (*e.g.,* "[company name]"), the index contains brackets around empty space (*e.g.,* "[ ]"). *See, e.g.*, Confidential J.A. Index at 39–40, ECF No. 66. That is how the public version of a document should be bracketed, not the confidential version. *See* USCIT R. 5(g) ("A non-confidential version in which the confidential or business proprietary information is deleted must accompany a confidential version of a paper."). This detail is crucial because it means that, even if the Court exercised extra diligence and searched the entire confidential joint appendix to confirm a company's name was not designated as confidential anywhere, it would not locate the place where the Commission supposedly designated the company name as confidential because the blank space in place of the company name would not show up in a search. Disregarding the parties' error does them no service, as bracketing information somewhere else in the record does not magically afford protection across the entire record.

The second excuse proffered is the "business proprietary" label stamped at the top of the questionnaire pages. Motion to Retract Attach. A at 3, ECF No. 93. This label, which is often partially obscured by the stamping mechanism of the Court's e-filing system, is exactly the type of blanket designation that USCIT Rule 5(g) prohibits. Rule 5(g) does not allow parties to designate information as confidential by labelling an entire page. Indeed, even Government officials classifying a document for national security reasons must indicate "which portions are classified ... and which portions are unclassified." Exec. Order No. 13,526, 75 Fed. Reg. 707, 710 (Dec. 29, 2009). Looking at the Commission's questionnaires, it is apparent why blanket designation is disfavored. One question asks, in essence, whether the responding company is a brick-and-mortar or online retailer. Blank "U.S. – Purchaser" Questionnaire at 9, U.S. Int'l Trade

Comm'n, https://bit.ly/3vjf04h (last visited Jan. 8, 2023).[2] Surely it is no secret whether a company has physical storefronts or whether it sells mattresses online. Allowing blanket designation like the Motion to Retract requests is incompatible with a system where public access to judicial proceedings is the default rule. *See Binh Hoa Le*, 990 F.3d at 417.

Finally, the Commission makes numerous allusions to the length of the administrative record to justify its failure to abide by USCIT Rule 5(g). *See, e.g.*, Motion to Retract at 2, ECF No. 93 (noting the length of the confidential record); Motion to Retract Attach. A at 3, ECF No. 93 (twice describing the record as "voluminous" while explaining that the Commission "inadvertently" failed to bracket large swaths of the record it now claims contain confidential information). Courts may not use administrative burden to justify denying public access to judicial records. *In re Leopold to Unseal Certain Elec. Surveillance Applications & Ords.*, 964 F.3d 1121, 1134 (D.C. Cir. 2020) (Garland, J.). Neither can quasi-judicial agencies like the Commission.

The Commission and the other parties missed multiple opportunities to raise concerns about this information earlier. If the parties believed the company names were confidential, the parties should have bracketed that information. *See* USCIT R. 5(g). Some of the information to which the Motion to Retract objects was discussed in open court at oral argument. *See, e.g.*, Oral Arg. Tr. at 25:5–26:16, ECF No. 75 (discussing specific companies by name and their product mixes). If the parties believed this information was confidential, they should have raised that concern during oral argument or on reviewing the transcript. *See* Admin. Order No. 02–01 at 8, 20 (outlining the procedures for breaches involving confidential information); Def.'s Public Req. for Redaction, *United States v. Aegis Security Ins. Co.*, No. 1:20-cv-03628 (CIT Jan. 2, 2024), ECF No. 132 (requesting redaction of allegedly confidential information in an oral argument transcript). It is strange that only now, after an opinion some may characterize as less than complimentary, does the Commission demand secrecy. If it was fine to discuss unbracketed company names in a public court session, it is fine to do the same in a written public opinion. The Commission's request to redact the names of the responding companies is therefore **DENIED**.

B. The Court's Use of Approximations

The second category of information to which the Motion to Retract objects is the Court's use of numerical approximations to describe the

[2] A blank version of the purchaser questionnaire in this investigation is available for download on the Commission's website at the listed URL.

general conditions of the mattress market. *See generally* Motion to Retract Attach. A at 1–2, ECF No. 93. This includes the origin of imports, relative share of imported and domestic mattresses in the market, and the segmented nature of mattress production and purchasing. *See id.*

As a preliminary matter, the Court doubts that much of the allegedly confidential information the Commission did properly bracket qualifies as confidential by the Commission's own definition[3] or by any reasonable understanding of the terms "confidential" or "business proprietary." The Commission's own questionnaires state "[t]he commercial and financial data furnished in response to this questionnaire *that reveal the individual operations of your firm* will be treated as confidential" and that "general characterizations of numerical business proprietary information (such as discussion of trends)" will be treated as confidential information only for good cause.[4] Blank "U.S. – Purchaser" Questionnaire at 4 (emphasis added). Yet the Motion to Retract objects to public discussion of the general market trends of declining Chinese imports and rising imports from other countries. *See* Motion to Retract Attach. A at 1, ECF No. 93. That is precisely the type of information the Commission's questionnaires acknowledge is not confidential or business proprietary. It does not reveal the individual operations of any company and is instead a general discussion of broad market trends. The same goes for the Slip Opinion's description of the respective market shares of imported and domestically produced mattresses. *See CVB*, 2023 Ct. Intl. Trade LEXIS 189, at *4, *10–11.

Much of the information on market trends and market share is publicly available. The decline in Chinese imports and concurrent rise in imports from other countries is well documented. *See, e.g.*, David Perry, *China's Mattress Import Share Falls to 1% in August*, FURITURE TODAY (Oct. 8, 2019), https://bit.ly/4aFKfH9 (reporting Chinese mattresses were 82 percent of imports in January 2019 and 1 percent in August 2019); David Perry, *Mattress Alliance, Petitioners Square Off Over Antidumping*, FURITURE TODAY (Apr. 13, 2020), https://bit.ly/3H3wmVE (reporting Vietnam, Thailand, Turkey, Serbia, Malaysia, Indonesia, and Cambodia collectively account for 83.3 percent

[3] The Commission's rules do not necessarily govern the Court, but information that fails to satisfy the Commission's standards for confidentiality is unlikely to satisfy the Court's standards.

[4] In the Motion to Retract, the Commission claims that it considers "the entirety of purchaser questionnaire responses" to be business confidential information. Motion to Retract Attach. A at 3, ECF No. 93. Once again, the Commission's own questionnaires are at war with its Motion. *Cf. supra* note 1.

of mattress imports). Information about the relative market share of imports and the domestic industry is also available from general interest newspapers. Nathan Bomey, *Chinese 'Dumping' Has Slashed Mattress Prices, but at a Cost to the U.S. Bedding Industry*, USA TODAY (Dec. 19, 2019), https://bit.ly/47qssRn (stating Chinese imports in 2018 were "equivalent to about one-third of total mattress production capacity in the United States."). The Court will not redact information as confidential that some of the responding parties themselves have freely provided to the press. *See, e.g.*, David Perry, *Mattress Alliance, Petitioners Square Off Over Antidumping*, FURITURE TODAY (Apr. 13, 2020), https://bit.ly/3H3wmVE (quoting Ashley Furniture Vice President Brian Adams saying imports from Vietnam, Thailand, Turkey, Serbia, Malaysia, Indonesia, and Cambodia make up "22 [percent] of the U.S. mattress market" and "83.3 [percent] of all mattress imports"). Although the parties claim that knowledge of Ashley Furniture's lopsided mattress production is "sensitive," Ashley's Vice President Brian Adams testified at the Commission's *public* hearing and stated that Ashley had shifted "almost exclusively to [boxed mattresses], both in our purchases and in our production." *Compare* Motion to Retract Attach. A at 2, ECF No. 93, *with* Statement of Brian Adams at 143:25–144:5, J.A. at 7,569, ECF No. 60, *and CVB*, 2023 Ct. Intl. Trade LEXIS 189, at *36 ("Of the twelve companies that produced both mattress types in 2019, five produced virtually none of one kind" and "Ashley ... produced far less than one percent of U.S. production of one kind of mattress."). Because this information is publicly available, it fails to qualify as confidential or business proprietary information. *See Food Mktg. Inst.*, 139 S. Ct. at 2363.

Even if information is confidential or business proprietary, the Court's use of approximations appropriately summarizes the information without revealing exact figures. *See* Blank "U.S. – Purchaser" Questionnaire at 4 ("general characterizations of numerical business proprietary information" will be treated as confidential only for good cause). Some of the objections raised border on frivolity. For instance, the Motion to Retract objects to the Court's use of the phrase "thousands of percent[.]" Motion to Retract Attach. A at 1, ECF No. 93; *see also CVB*, 2023 Ct. Intl. Trade LEXIS 189, at *4. Thousands of percent can mean anything from 2,000 percent to 999,999 percent. Such a wide range can hardly tip off a reader to anything approaching the exact number the Commission bracketed. The same goes for the term "negligible." *Compare* Motion to Retract Attach. A at 2, ECF No. 93, *with CVB*, 2023 Ct. Intl. Trade LEXIS 189, at *36. The word

negligible is comparative. *See* Webster's Second New International Dictionary 1638 (1956) (defining negligible as "that may be neglected or disregarded"); *Negligible*, Oxford English Dictionary, https://bit.ly/3NRiW2R (defining negligible as "so small or insignificant as not to be worth considering"). That a company's market share of boxed mattress production is negligible compared to its unknown share of flat-packed mattress production does not reveal the actual market share percentage for either. *Compare* Motion to Retract Attach. A at 2, ECF No. 93, *with CVB*, 2023 Ct. Intl. Trade LEXIS 189, at *35–36.

Elsewhere, the Court similarly couches its language to avoid exactness. The Slip Opinion uses words like "roughly," "about," and "at least" to indicate that the numbers given are merely a rough approximation. *See, e.g.*, *CVB*, 2023 Ct. Intl. Trade LEXIS 189, at *4, *10, *35, *39. It also uses ratios to demonstrate the lopsided nature of domestic mattress production without revealing the raw production figures. *Id.* at *35–37. Ballpark figures like these provide enough information for the reader to understand the case without revealing any confidential or business proprietary information. Because these general summaries do not reveal such information, they need not be redacted.

C. The Virtues of Transparency

The American tradition of public access to judicial proceedings dates back not merely to the founding, or even to the English common law, but all the way back to Ancient Rome. *Binh Hoa Le*, 990 F.3d at 418 ("The principle traces back to Roman law, where trials were *res publica*—public affairs."). Legal arguments and judicial decisions are meant to be public because "American courts are not private tribunals summoned to resolve disputes confidentially at taxpayer expense." *Id.* at 421. This is especially true when the courts resolve disputes to which the Government is a party, affecting the entire citizenry. Like a student taking a math test, courts are expected to show their work. The public does not and should not accept final answers to complicated questions on faith alone. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 595 (1980) (Brennan, J., concurring) ("Closed trials breed suspicion of prejudice and arbitrariness, which in turn spawns disrespect for law.").

Although the Court adjudicates the Motion to Retract based on the law and the facts currently before it, this is not the first time the Commission has taken a questionable position on transparency before the Court. The Commission took a similar tact in a high-profile case involving fertilizer imports. *See generally OCP S.A. v. United States*, 658 F. Supp. 3d 1297 (CIT 2023). In a conference prior to oral

argument, the Court noted that more than one hundred members of Congress had formally commented on the Commission's decision. Despite the public interest in the case, the Commission urged the Court to hold the entire oral argument in closed session. Audio Recording: Conference Call Regarding Oral Argument at 24:33–50 (June 7, 2022), ECF No. 144.[5] This would bar attendance by not only the public but also all non-lawyers, including corporate officers of the parties to the case. The Commission's counsel urged this route because she believed business proprietary information "underline[d] all the aspects and all the disputes" in the case. *Id.* at 29:05–15. The Court decided to hold a public oral argument with a confidential session at the end if necessary. *Id.* at 33:00–35:00. The transcript of the eventual oral argument was 229 pages. *See* Confidential Oral Arg. Tr., ECF No. 130. The public portion comprised 192 of those pages. *See* Public Oral Arg. Tr., ECF No. 129. The opinion dispensing with the case was entirely public. *Compare* Audio Recording: Conference Call at 24:33–50 (Commission counsel claiming it would be impossible to conduct a public hearing on the matter), *with OCP S.A.*, 658 F. Supp. 3d at 1297–1324 (28 reporter pages of opinion, none of which are confidential).

As with *OCP*, the Commission's decision in this matter and in the related petitions regarding mattresses from China drew public attention. Multiple media outlets published reports or editorials about the antidumping petitions. *See, e.g.*, Derek Miller & Miles Hansen, *Will Biden 'Go to the Mattresses' on Trade Policy?* THE HILL (Feb. 23, 2021), https://bit.ly/3NPsHOQ. Numerous local outlets reported the petitions' potential effects on businesses. *See, e.g.*, Dennis Romboy, *Mattress Fight: Utah Firm Says 'Corporate Warfare' Threatens to Blunt Filling Critical Coronavirus Needs*, DESERT NEWS (Apr. 18, 2020), https://bit.ly/3tEcxBa. Senators on both sides of the political aisle publicly commented on the petitions and how the Commission handled them. *See, e.g.*, *id.* (Senator Mike Lee of Utah); *Brown, Blunt Applaud Trade Commission Ruling on Mattress Antidumping Investigation* (July 6, 2021), https://bit.ly/48EUdXr (Senators Sherrod Brown of Ohio and Roy Blunt of Missouri). When faced with public attention, the Commission's reflexive action appears to be to stifle public access to the judicial review of its decisions.

Although the Commission is not an elected body, it is part of the executive branch and is accountable to the people through their elected representatives. The Commission's actions, like the Court's,

[5] The ECF Numbers in this citation and the remaining citations in this paragraph correspond to docket entries in the *OCP* case, not this case. The Court Number for *OCP* is 1:21-cv-00219.

are not merely academic. An injury finding can make goods more expensive for consumers across the nation. A finding of no injury can close factories and destroy manufacturing jobs. Companies affected by this investigation claimed the Commission's decision could result in job losses. *See, e.g.*, Romboy, *Mattress Fight*, DESERT NEWS (Apr. 18, 2020), https://bit.ly/3tEcxBa (Mattress company Malouf claiming the petition in this case "threatens to shut down its business and leave 1,200 workers ... without jobs"). When someone loses his livelihood as a result of Government action, he has a right to know how and why the Government took that action. Neither administrative agencies nor this Court can hide from scrutiny by censoring information. Citizens can only hold their Government accountable if they know what that Government is doing. *See Bien Hoa Le*, 990 F.3d at 417 ("[B]ecause 'We the People' are not meant to be bystanders, the default expectation is transparency — that what happens in the halls of government happens in public view."); *Matter of Krynicki*, 983 F.2d 74, 75 (7th Cir. 1992) ("What happens in the halls of government is presumptively open to public scrutiny."). Though the Commission may be an "independent" agency, it is not immune to legal and democratic accountability. *Cf.* 19 U.S.C. §§ 1330, 1333(g). The Constitution governs all branches of the Government — even the administrative state. *See Loper Bright Enters., Inc. v. Raimondo*, 45 F.4th 359 (D.C. Cir. 2022), *cert. granted in part sub nom. Loper Bright Enters. v. Raimondo*, 143 S. Ct. 2429 (2023); *Relentless, Inc. v. Dep't of Com.*, 62 F.4th 621 (1st Cir.), *cert. granted in part sub nom. Relentless, Inc. v. Dep't of Com.*, 144 S. Ct. 325 (2023).

CONCLUSION

Transparency is a touchstone of our judicial system. Only information that is truly confidential may be concealed from the public. Parties are expected to diligently follow the rules regarding confidentiality to promote public access to the judiciary, protection of confidential information, and judicial efficiency. Because the parties failed to abide by the Court's rules and object to statements by the Court that are not confidential, the Motion to Retract is **DENIED.**

Dated: January 8, 2024
New York, New York

Stephen Alexander Vaden
STEPHEN ALEXANDER VADEN, JUDGE

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