

U.S. Customs and Border Protection



FACIAL COMPARISON FOR APIS COMPLIANCE TEST: RENEWAL OF TEST

AGENCY: U.S. Customs and Border Protection; DHS.

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection (CBP) is renewing the Facial Comparison for Advance Passenger Information System (APIS) Compliance Test. Commercial air and sea carriers that voluntarily participate in this test use CBP's Traveler Verification Service (TVS) to comply with APIS regulatory requirements. During this test, participating carriers will use the existing TVS to ensure the manifest information sent to CBP is correct and to perform the required identity verification pursuant to APIS regulations. This process has the potential to expedite the departure process as compared to the manual data and identity verification process.

DATES: This renewal extends the test for an additional two years, expiring on February 16, 2027, unless renewed. The initial voluntary test began on February 16, 2023, and was set to expire on February 16, 2025. CBP will announce any modifications by notice in the **Federal Register**.

ADDRESSES: Applications to participate in the Facial Comparison for APIS Compliance Test must be submitted via email to *biometricair@cbp.dhs.gov*. Please use "APIS Compliance Test" in the subject line of the email. Written comments concerning program, policy, and technical issues may also be submitted via email to *biometricair@cbp.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Natascha A. Gutermuth, Program Manager, Innovation and Strategy Directorate, Office of Field Operations, *natascha.a.gutermuth@cbp.dhs.gov* or (202) 417-0096.

SUPPLEMENTARY INFORMATION:

I. Background

Under U.S. Customs and Border Protection (CBP) regulations, the appropriate officials¹ of commercial airlines and vessels (collectively, “carriers”) arriving in or departing from the United States are required to transmit an electronic manifest to CBP through the Advance Passenger Information System (APIS) that lists all crewmembers and passengers (collectively, “travelers”). The electronic manifest must be transmitted within a specified timeframe, generally before the vessel or aircraft departs, though the exact timeframe varies depending on the circumstances of the trip and type of carrier. *See* Immigration and Nationality Act, 66 Stat. 163, sec. 231, as amended (8 U.S.C. 1221); 19 U.S.C. 1433; 49 U.S.C. 44909; 19 CFR 4.7b(b), 4.64(b), 122.49a(b), 122.49b(b), 122.49c, 122.75a(b), and 122.75b(b). The electronic manifest must include the travelers’ biographic information including, for example, name, age, date of birth, citizenship, passport number if relevant, and other data elements depending upon the circumstances of the trip, the type of traveler (*e.g.*, crew or passenger), and the type of carrier as well as such other information as determined necessary by the Secretary of the Department of Homeland Security (DHS), in consultation with the Secretary of State, for flights and vessels arriving in and departing from the United States, or as determined necessary by the Administrator of the Transportation Security Administration (TSA), in consultation with the Commissioner of CBP, for flights arriving in the United States. *See* 8 U.S.C. 1221; 49 U.S.C. 44909.

As part of the reporting process, a carrier must, among other things, compare the travel document presented by the traveler with the information the carrier is transmitting to CBP on the electronic manifest in order to (1) verify that the manifest information transmitted to CBP is correct; and (2) verify that the traveler is the person to whom the travel document was issued. *See* 19 CFR 4.7b(d), 4.64(d), 122.49a(d), 122.49b(d), 122.75a(d), and 122.75b(d). These two requirements will be referred to in this document as the “APIS verification requirements”.

To improve the accuracy and efficiency of the APIS verification requirements, CBP introduced the Facial Comparison for APIS Compliance Test on February 16, 2023.² Carriers that participate in the

¹ An “appropriate official” is defined as the master or commanding officer, or authorized agent, owner, or consignee of a commercial aircraft or vessel; this term and the term “carrier” are sometimes used interchangeably within the regulations. *See* 19 CFR 4.7b(a), 122.49a(a).

² 88 FR 10137 (Feb. 16, 2023).

test use CBP's Traveler Verification Service (TVS) to aid compliance with APIS verification requirements. Participation in this test is on a voluntary basis for both carriers and travelers.

Carriers participating in this test collect facial images (photographs) of certain travelers at the gate or other identity check points.³ Carriers then transmit those facial images to CBP's TVS facial comparison service which compares transmitted images to biometric templates⁴ generated from pre-existing photographs that CBP already maintains, known as a "gallery." When CBP receives a passenger manifest, CBP builds a gallery of photographs for the individuals identified on the manifest. These images may include photographs captured by CBP during previous entry inspections, photographs from U.S. passports and U.S. visas, and photographs from other Department of Homeland Security (DHS) encounters.

If the TVS matches the traveler's facial image to a photograph in the gallery and the manifest information transmitted to CBP is correct, the carrier's APIS verification requirements are considered fulfilled and the carrier is not required to perform any additional identity or passenger manifest verification.⁵ If the traveler's facial image does not result in a match from the TVS for any reason, participating carriers must verify the traveler's identity through a manual review of the traveler's travel documents pursuant to the existing APIS regulatory requirements. If a carrier identifies a traveler whose facial image has been incorrectly matched by the TVS to another passenger (referred to as a "false positive"), the carrier must manually review the travel documents of any such false positives pursuant to current APIS requirements.⁶

If an individual traveler does not want to be photographed, the traveler can opt out of this procedure by notifying the carrier. CBP requires that carriers post clear and visible signs notifying travelers

³ Individual travelers may opt out of the APIS test procedures if they do not wish to provide their facial image.

⁴ A biometric template is a digital representation of a biometric trait of an individual generated from a biometric image and processed by an algorithm. The template is usually represented as a sequence of characters and numbers. For the TVS, templates cannot be reverse engineered to recreate a biometric image. The templates generated for the TVS are proprietary to a specific vendor's algorithm and cannot be used with another vendor's algorithms.

⁵ Carriers still need to ensure that each traveler has a valid passport or authorized travel document in the traveler's possession. This separate check for a valid passport or authorized travel document fulfills the passenger manifest requirements for the United States, but there may be additional requirements from destination or transit countries.

⁶ In the unlikely event that a false positive results in the creation of an incorrect travel record, the traveler affected by the incorrect travel record can seek redress through the DHS Traveler Redress Inquiry Program (DHS TRIP) at <https://www.dhs.gov/dhs-trip>, or the CBP redress process, which can be found at <https://www.cbp.gov/travel/international-visitors/i-94/traveler-compliance>.

of their ability to opt out. Additionally, carriers may choose to give a verbal announcement during the boarding process with additional information about CBP's use of facial comparison technology. If a traveler opts out of the APIS test procedures, the carrier must perform a manual review of the travel documents to ensure the manifest information sent to CBP is correct and verify the traveler's identity as required by the APIS regulations. CBP requires carriers to provide an electronic manifest listing all travelers pursuant to APIS regulations, regardless of the verification process used by the carrier.

II. Facial Comparison for APIS Compliance Test: Renewal

This notice extends the Facial Comparison for APIS Compliance Test beyond its original expiration date of February 16, 2025, for an additional period of two years. This renewal does not modify any other provision of the original notice. All provisions of the original notice, with the exception of the amended expiration date, will remain applicable through the extended period.

For convenience, CBP has republished portions of the previous notice in the following subsections, including the authorization for this test, a description of the affected regulatory requirements, expected costs and benefits, test evaluation criteria, consequences of misconduct under the test, a privacy notice, and a statement regarding the Paperwork Reduction Act. Further information regarding the Facial Comparison for APIS Compliance Test can be found in the original notice for this test.⁷

A. Duration and Purpose of the Extended Test

The purpose of the APIS test is to determine the feasibility of allowing carriers to use CBP's TVS facial comparison service to comply with the carriers' APIS verification requirements. During the initial testing period, some carriers were not able to participate due to factors outside of CBP's control, including carriers' funding availability and the travel industry's recovery from COVID-19 related disruptions. To effectively evaluate the feasibility of allowing carriers to use CBP's TVS facial comparison service to comply with APIS verification requirements, it is necessary for CBP to evaluate a broader group of participants. Thus, CBP is extending the testing period to allow additional carriers to participate in the test who may not have been able to do so previously.

The Facial Comparison for APIS Test was originally scheduled to run for a period of two years, beginning on February 16, 2023, and ending on February 16, 2025. Through this notice, CBP is renewing

⁷ 88 FR 10137 (Feb. 16, 2023).

the facial comparison test and extending it beyond its original expiration date. The facial comparison test will run for an additional period of two years beginning on February 16, 2025, and ending on February 16, 2027. While the test is ongoing, CBP will evaluate the results and determine whether the test should be extended or otherwise modified. CBP reserves the right to discontinue this test at any time at CBP's sole discretion. CBP will announce any modifications by notice in the **Federal Register**.

B. Eligibility and Participation Requirements

Any commercial air or commercial sea carrier may apply to participate in the APIS test. To participate in this test, a carrier must submit a request to participate to *biometricair@cbp.dhs.gov*. Applicant carriers must meet all CBP requirements for this test, including those listed in the Business Requirements Document⁸ and the Technical Reference Guides provided by CBP to the carriers. Upon request, CBP will provide the carrier with the full list of requirements for participation which vary depending upon the specific circumstances of the carrier.

Carriers must agree that they will not store or retain any photos taken while using TVS facial comparison services. Carriers must provide CBP with a CBP-approved method of auditing compliance with this requirement. Any system log files associated with a TVS enabled system must be approved by CBP to ensure compliance with DHS and CBP privacy and security policies and all applicable privacy statutes and regulations.

The carrier must also sign and return the Business Requirements Document to CBP in order to participate in the APIS test. The Business Requirements Document is an acknowledgement by the carrier that it agrees to all CBP terms and technical specifications as well as any other requirements as determined by CBP.

Any carrier that wishes to participate in the APIS test may contact CBP via email at *biometricair@cbp.dhs.gov* to request the detailed technical requirements for participation, as well as to obtain a copy of the Business Requirements Document to be signed by the carrier. If the carrier wishes to participate in the test, it can return the signed Business Requirements Document and CBP will coordinate with the carrier to ensure that the carrier's systems meet the technical and privacy requirements as determined by CBP.

It is within CBP's sole discretion to refuse test participation for any carrier.

⁸ The Business Requirements Document is available at: <https://www.cbp.gov/document/specifications/exit-business-requirements-document>.

C. Authorization for This Test

The renewed test described in this notice is authorized pursuant to 19 CFR 101.9(a), which allows the Commissioner of CBP to impose requirements different from those specified in the CBP regulations for conducting a test program or procedure designed to evaluate the effectiveness of new technology or operation procedures regarding the processing of passengers, vessels, or merchandise. This test is authorized pursuant to this regulation as it is designed to evaluate whether the use of CBP's TVS technology is a feasible way for carriers to meet their APIS verification requirements.

D. Waiver of Certain Regulatory Requirements

Under CBP's APIS regulations, carriers are responsible for, among other things, comparing the travel documents presented by passengers with the manifest information the carrier is transmitting to CBP to verify that the information is correct and to verify the identity of the traveler. Under this test, these manual APIS verification requirements will be waived if CBP's TVS returns a match of the traveler's facial image to a photograph in the gallery.⁹ When the TVS returns a match of a traveler's facial image, a participating carrier's APIS verification requirements under 19 CFR 122.49a(d), 122.49b(d), 122.75a(d), and 122.75b(d) will be considered fulfilled without the carrier further inspecting the traveler's travel documents.¹⁰

As noted in Section I., if CBP's TVS does not return a match of the traveler's facial image or a traveler opts out of the APIS test procedures, the carrier must perform a manual document check to fulfill the APIS verification requirements.

E. Costs

Under this test, CBP gives participating carriers access to its TVS facial comparison service, and the carriers are responsible for selecting and purchasing the image capture and transmission equipment that best fits their needs. Carriers that participated in the Facial Comparison for APIS Compliance Test prior to this extension may continue to use equipment that meets CBP's technical requirements. There are no new costs attributable solely to the extension of the Facial Comparison for APIS Compliance Test.

⁹ However, in the event of a "false positive" as discussed above, the carrier will still be required to manually review the travel documents in accordance with the requirements of 19 CFR 122.49a(d), 122.49b(d), 122.75a(d), and 122.75b(d).

¹⁰ As noted in Section I., carriers are still required to ensure that each traveler has a valid passport or authorized travel document in the traveler's possession.

The cost of the equipment varies by carrier and may depend on how the equipment is used. CBP believes costs will range from \$5,000 to \$20,000 per departure gate, based on CBP's experience from the initial testing period and CBP's experience with other facial comparison tests. It is also possible that costs will go down substantially over time as carriers develop more efficient and inexpensive equipment.

F. Benefits

The goal of the APIS test is to enable carriers to satisfy the APIS verification requirements with greater accuracy and efficiency by eliminating the manual data and identity verification process in most cases. The use of TVS technology for APIS verification purposes has the potential to speed up the departure process for both carriers and travelers, as it enables travelers to be matched more efficiently to their travel documents. Various airlines have already partnered with CBP to test facial comparison in other contexts pursuant to regulations in title 8 of the Code of Federal Regulations. While these other programs are unrelated to APIS compliance, the use of facial comparison technology in those contexts is comparable to the test procedures detailed here and participants have reported that facial comparison tests speed up the boarding process substantially.¹¹

Performing biometric identity verification can also help CBP and partner stakeholders reconcile any errors or incomplete data in a traveler's biographic data. CBP anticipates that having a more accurate verification will result in more accurate border crossing records of travelers. This will allow CBP to more effectively identify overstays and aliens who are, or were, present in the United States without having been admitted or paroled and prevent their unlawful reentry into the United States. It will also make it more difficult for imposters to utilize other travelers' credentials. Ultimately, this provides CBP with more reliable information to verify identity and strengthens CBP's ability to identify criminals and known or suspected terrorists.

¹¹ In one test, an airline partner has been able to board an Airbus A-380 with 350 travelers in only 20 minutes. (<https://www.cntraveler.com/story/orlando-airport-first-in-the-us-to-scan-faces-of-all-international-passengers>. Accessed Oct. 15, 2024.) Another airline partner has reported to CBP that its baseline loading time for an A-380 is 45 minutes. In the test of the integrated facial comparison service used at the Orlando Airport, travelers have experienced a 15-minute time savings. According to one news article, this is down from 30 minutes for a 240-passenger plane. (<https://www.forbes.com/sites/grantmartin/2018/06/24/orlando-airport-deploys-biometric-scanners-at-all-international-gates/#2a4a588118f9>. Accessed Oct. 15, 2024.) In both tests, boarding times are reduced by approximately 50 percent.

G. Evaluation of the APIS Test

CBP will use the results of this test to assess the operational feasibility of using the TVS facial comparison service for the purposes of compliance with the APIS verification requirements. CBP will evaluate this test based on a number of criteria, including:

- the percentage of travelers for whom CBP had a gallery photo available for matching purposes; and
- the ability of the technology to correctly match the facial images captured to the correct individuals' facial image(s) on file, including continued tracking of any differences in matching performance based on measurable demographic factors.

CBP's operational data continues to show there is no measurable differential performance in matching based on demographic factors. CBP continually monitors algorithm performance and technology enhancements to ensure CBP is deploying the most accurate and effective algorithm. CBP continues to partner with the National Institute of Standards and Technology (NIST) and use NIST research to ensure continued optimal performance.¹² CBP will continue its review of matches and no-matches to determine the reason for such a match, including whether the match was based on a demographic factor (age, gender, citizenship). CBP will continue to work both internally and with partners to identify and remediate disparate impacts and other forms of bias and discrimination, if any.¹³

H. Misconduct Under the Test

If a carrier participating in the test fails to abide by the rules, procedures, or terms and conditions of this test, fails to exercise reasonable care in the execution of participant obligations, or otherwise fails to comply with all applicable laws and regulations, the participant may be suspended from participation in this test and/or subjected to penalties, liquidated damages, and/or other administrative or judicial sanction under APIS regulations.

¹² In July 2021, NIST published its Face Recognition Vendor Test (FRVT) Part 7: Identification for Paperless Travel and Immigration, available at: <https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8381.pdf>. The report demonstrates that the current biometric facial recognition technology passes the threshold for use in CBP's Biometric Exit Program, based on computer-focused simulations. In December 2019, NIST published the FRVT Part 3: Demographic Effects, available at: <https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8381.pdf>. As the report demonstrates, NEC-3, which CBP uses, is among the algorithms with an undetectable false positive differential. NIST also noted, "NEC-3, is on many measures the most accurate we have evaluated," see page 8 of the report.

¹³ Information regarding biometric matching performance can be found on CBP's website at <https://biometrics.cbp.gov/privacy> which includes a link to CBP's Privacy Evaluation Report as well as the TVS Privacy Impact Assessment (PIA). The PIA is also available at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

If CBP determines that a suspension is warranted, CBP will notify the participant of this decision, the facts or conduct warranting suspension, and the date when the suspension will be effective. This decision may be appealed in writing to the Executive Assistant Commissioner, Office of Field Operations, within 15 days of notification. The appeal should address the facts or conduct charges contained in the notice and state how the participant has or will achieve compliance. CBP will notify the participant within 30 days of receipt of an appeal whether the appeal is granted. If the appeal is granted and the participant has already been suspended, CBP will notify the participant when its participation in the test will be reinstated.

I. Privacy

CBP will continue to ensure that all Privacy Act requirements and applicable DHS privacy policies are adhered to during this test.¹⁴ Pursuant to these requirements, CBP will delete photos of U.S. citizens immediately upon confirmation of U.S. citizenship.¹⁵ CBP will retain photos of all aliens and no-matches for up to 14 days in the Automated Targeting System (ATS). DHS may retain the facial images of in-scope¹⁶ aliens for up to 75 years in DHS's Automated Biometric Identification System (IDENT) system, and any successor system.

CBP has issued a Privacy Impact Assessment (PIA) for TVS, which outlines how CBP ensures compliance with Privacy Act protections and DHS privacy policies, including DHS's Fair Information Practice Principles (FIPPs). The FIPPs account for the nature and purpose of the information being collected in relation to DHS's mission to preserve, protect, and secure the United States. The PIA addresses issues such as the security, integrity, and sharing of data, use limitations, and transparency. The PIA is publicly available at: <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

CBP has also issued the DHS/CBP-005 APIS System of Records Notice (SORN), the APIS PIA, the DHS/CBP-007 Border Crossing Information (BCI) SORN, and the DHS/CBP-006 Automated Targeting System (ATS) SORN. These documents encompass all data col-

¹⁴ See 5 U.S.C. 552a and <https://www.dhs.gov/privacy-policy-guidance>.

¹⁵ Photos of U.S. citizens are destroyed immediately upon confirmation of U.S. citizenship, but no later than 12 hours only under specific circumstances. If there is a system or network issue, photos will reside in an inaccessible queue for up to 12 hours and will be processed once the system and/or network connectivity is re-established and proper dispositioning (confirmation of U.S. citizenship) can occur. Further information about the retention of facial images is provided in the TVS Privacy Impact Assessment (PIA). The TVS PIA is available at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

¹⁶ An "in-scope" alien is any person who is required by law to provide biometrics upon entry or exit from the United States pursuant to 8 CFR 215.8(a) and 235.1(f).

lected for APIS compliance, as well as data collected to create border crossing records for individuals. CBP will create new documents or update these documents as needed to reflect the use of biometric data for the purposes of this test and will make these documents available at: <https://www.dhs.gov/compliance>.

J. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB). This information collection is covered by OMB control numbers 1651–0138 Biometric Identity and 1651–0088 Passenger and Crew Manifest.

Dated: February 21, 2025.

DIANE J. SABATINO,
*Acting Executive Assistant Commissioner,
Office of Field Operations,
U.S. Customs and Border Protection.*

**NOTICE OF IMPLEMENTATION OF ADDITIONAL DUTIES
ON PRODUCTS OF CANADA PURSUANT TO THE
PRESIDENT'S EXECUTIVE ORDER 14193, IMPOSING
DUTIES TO ADDRESS THE FLOW OF ILLICIT DRUGS
ACROSS OUR NORTHERN BORDER**

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

ACTION: Notice.

SUMMARY: In order to effectuate the President's Executive Order 14193, "Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border," as amended by Executive Order 14197, "Progress on the Situation at Our Northern Border", and subsequently amended by the President's March 2, 2025 Executive Order "Amendment to Duties to Address the Flow of Illicit Drugs Across Our Northern Border", which imposed specified rates of duty on imports of articles that are products of Canada, the Secretary of Homeland Security has determined that appropriate action is needed to modify the Harmonized Tariff Schedule of the United States (HTSUS) as set out in the Annex to this notice.

DATES: The duties set out in the Annex to this document are effective with respect to products of Canada that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 4, 2025.

FOR FURTHER INFORMATION CONTACT: Brandon Lord, Executive Director, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, (202) 325-6432 or by email at traderemedy@cbp.dhs.gov. Susan Thomas, Executive Director, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs and Border Protection, (202) 344-3401 or by email at traderemedy@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION: On January 20, 2025, the President declared a national emergency with respect to the grave threat to the United States posed by the influx of illegal aliens and drugs into the United States in Proclamation 10886 (Declaring a National Emergency at the Southern Border). See National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA).

On February 1, 2025, the President expanded the scope of the national emergency declared in that proclamation to cover the threat to safety and security of Americans, including the public health crisis of deaths due to the use of fentanyl and other illicit drugs and the failure of Canada to do more to arrest, seize, detain, or otherwise

intercept drug trafficking organizations, other drug and human traffickers, criminals at large, and drugs. In addition, the President determined that this failure to act on the part of Canada constitutes an unusual and extraordinary threat, which has its source in substantial part outside the United States, to the national security and foreign policy of the United States. *See* Executive Order 14193 (90 FR 9113), dated February 1, 2025.

To address this threat, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the NEA, section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), and 3 U.S.C. 301, the President imposed ad valorem tariffs on all imports that are products of Canada, excluding those encompassed by 50 U.S.C. 1702(b). Specifically, the February 1, 2025 Executive Order adjusted duties on imported products of Canada, except for imports of energy and energy resources that are products of Canada, by imposing, consistent with law, an additional 25 percent ad valorem rate of duty as described in the Annex to this notice. With respect to imports of energy and energy resources that are products of Canada, as described in the Annex to this notice, the Executive Order imposed, consistent with law, an additional 10 percent ad valorem rate of duty.

On February 3, 2025, the President issued Executive Order 14197, “Progress on the Situation at our Northern Border” (90 FR 9183), which amended Executive Order 14193 by pausing the implementation of the additional duties for 30 days until March 4, 2025, to allow time to assess whether actions taken by Canada as of that date were sufficient to alleviate the crisis and resolve the unusual and extraordinary threat beyond our southern border. Additionally, Executive Order 14197 withdrew the exceptions in section 2(a) of Executive Order 14193 related to covered goods loaded onto a vessel at a port of entry or in transit on the final mode of transport prior to entry into the United States.

Subsequently, on March 2, 2025, the President amended subsection (h) of section 2 of Executive Order 14193, to modify the application of 19 U.S.C. 1321 to goods covered by subsection (a) and subsection (b) of section 2 of Executive Order 14193. *See* Executive Order “*Amendment to Duties to Address the Flow of Illicit Drugs Across Our Northern Border*” (March 2, 2025). Specifically, as amended, section 2(h) of Executive Order 14193 provides that duty-free *de minimis* treatment under 19 U.S.C. 1321 is available for otherwise eligible covered articles described in the Executive Order, but shall cease to be available for such articles upon notification by the Secretary of Commerce to the President that adequate systems are in place to fully and expe-

diently process and collect tariff revenue applicable pursuant to subsection (a) and subsection (b) of section 2 of the Executive Order for covered articles otherwise eligible for *de minimis* treatment.

Executive Order 14193 directed the Secretary of Homeland Security to determine and implement the necessary modifications to the Harmonized Tariff Schedule of the United States (HTSUS), consistent with law, in order to effectuate the Executive Order, as amended by Executive Order 14197.

In order to implement the rates of duty imposed by the Executive Order, as amended, effective on 12:01 a.m. eastern standard time on March 4, 2025, subchapter III of chapter 99 of the HTSUS is modified by the Annex to this notice.

Articles that are products of Canada, excluding those encompassed by 50 U.S.C. 1702(b), that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 4, 2025, will be subject to the additional *ad valorem* rate of duty provided for in new HTSUS headings 9903.01.10 or 9903.01.13.

Imported products of Canada that are encompassed by 50 U.S.C. 1702(b) will not be subject to the additional *ad valorem* duty rates provided for in new HTSUS headings 9903.01.10 or 9903.01.13, but such qualifying products, other than products for personal use included in accompanied baggage of persons arriving in the United States, must be declared and entered under new HTSUS heading 9903.01.11 or new HTSUS heading 9903.01.12, as applicable. Specifically, new HTSUS heading 9903.01.11 covers products encompassed by 50 U.S.C. 1702(b)(2) and new HTSUS heading 9903.01.12 covers products encompassed by 50 U.S.C. 1702(b)(3).¹

The additional *ad valorem* duty provided for in new HTSUS headings 9903.01.10 and 9903.01.13 applies in addition to all other applicable duties, taxes, fees, exactions, and charges.

Further, pursuant to the March 2, 2025 Executive Order, the administrative exemption from duty and certain taxes at 19 U.S.C.

¹ 50 U.S.C. 1702(b)(1) covers “postal, telegraphic, telephonic, or other personal communication[s], which do[] not involve a transfer of anything of value,” and hence does not encompass any imported articles of merchandise. 50 U.S.C. 1702(b)(4) covers “transactions ordinarily incident to travel to or from any country, including [1] importation of accompanied baggage for personal use, [2] maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and [3] arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.” Only the first of the three categories of exceptions covered by 50 U.S.C. 1702(b)(4)—products for personal use included in accompanied baggage of persons arriving in the United States—encompasses imported articles of merchandise, and such articles are excluded from the scope of the additional *ad valorem* duties provided for in new HTSUS headings 9903.01.10 and 9903.01.13 by the terms of those headings and new U.S. note 2(j).

1321(a)(2)(C)—known as the “*de minimis*” exemption—continues to be available for articles covered by headings 9903.01.10 and 9903.01.13 that are otherwise eligible for the exemption, including for eligible articles sent to the United States through the international postal network, but shall cease to be available for such articles upon notification by the Secretary of Commerce to the President that adequate systems are in place to fully and expediently process and collect tariff revenue applicable to articles covered by headings 9903.01.10 and 9903.01.13 otherwise eligible for the “*de minimis*” exemption. Accordingly, articles that are the product of Canada that are eligible for the *de minimis* exemption and are covered by headings 9903.01.10 and 9903.01.13 may continue to request duty free *de minimis* treatment until such time as the Secretary of Commerce, in consultation with the Secretary of the Treasury, so notifies the President and further guidance is provided.

The additional ad valorem duty provided for in new HTSUS headings 9903.01.10 and 9903.01.13 also applies to products of Canada that are eligible for special tariff treatment under general note 3(c)(i) to the HTSUS, and that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99. The Annex to this notice includes instruction on the application of the additional duties to goods entered under certain provisions of chapters 98 and 99 of the HTSUS, along with the application of the additional duties to goods qualifying for special tariff treatment under the United States-Mexico-Canada Agreement (USMCA).

The additional duties imposed by headings 9903.01.10 and 9903.01.13 shall not apply to goods for which entry is properly claimed under a provision of chapter 98 of the tariff schedule pursuant to applicable regulations of U.S. Customs and Border Protection (“CBP”), and whenever CBP agrees that entry under such a provision is appropriate, except for goods entered under subheading 9802.00.80; and subheadings 9802.00.40, 9802.00.50, and 9802.00.60. For subheadings 9802.00.40, 9802.00.50, and 9802.00.60, the additional duties apply to the value of repairs, alterations, or processing performed (in Canada), as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article assembled abroad (in Canada), less the cost or value of such products of the United States, as described.

The Annex to this notice also provides that products of Canada include both goods of Canada under the rules set forth in part 102, Title 19 of the Code of Federal Regulations, as applicable, as well as goods for which Canada was the last country of substantial transformation prior to importation into the United States.

Articles that are products of Canada, excluding those encompassed by 50 U.S.C. 1702(b), except those that are eligible for admission to a foreign trade zone under “domestic status” as defined in 19 CFR 146.43, and are admitted into a United States foreign trade zone on or after 12:01 a.m. a.m. eastern standard time on March 4, 2025, must be admitted as “privileged foreign status” as defined in 19 CFR 146.41. Such articles will be subject, upon entry for consumption, to the duties imposed by the Executive Order, as amended, and the rates of duty related to the classification under the applicable HTSUS heading or subheading in effect at the time of admission into the United States foreign trade zone.

No drawback shall be available with respect to the additional duties imposed pursuant to the Executive Orders.

KRISTI NOEM,
Secretary.

Annex

To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 4, 2025, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.01.10 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/ Subheading”, “Article Description”, “Rates of Duty 1—General”, “Rates of Duty 1—Special” and “Rates of Duty 2”, respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
“9903.01.10	Except for products described in headings 9903.01.11, 9903.01.12 or, 9903.01.13, articles the product of Canada, as provided for in U.S. note 2(j) to this subchapter.	The duty provided in the applicable subheading + 25%.	The duty provided in the applicable subheading + 25%.	No change”.

2. by inserting the following new heading 9903.01.11 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, “Rates of Duty 1—General”, “Rates of Duty 1—Special” and “Rates of Duty 2”, respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
“9903.01.11	Articles the product of Canada that are donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, as provided for in U.S. note 2(k) to this subchapter.	The duty provided in the applicable subheading.	The duty provided in the applicable subheading.	No change”.

3. by inserting the following new heading 9903.01.12 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, “Rates of Duty 1—General”, “Rates of Duty 1— Special” and “Rates of Duty 2”, respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
"9903.01.12	Articles the product of Canada that are informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.	The duty provided in the applicable subheading.	The duty provided in the applicable subheading.	No change".

4. by inserting the following new heading 9903.01.13 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled "Heading/Subheading", "Article Description", "Rates of Duty 1—General", "Rates of Duty 1—Special" and "Rates of Duty 2", respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
"9903.01.13	Except for products described in headings 9903.01.11 and 9903.01.12, and other than products for personal use included in accompanied baggage of persons arriving in the United States, articles the product of Canada: Crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. 1606(a)(3)	The duty provided in the applicable subheading + 10%.	The duty provided in the applicable subheading + 10%.	No change".

5. by inserting the following new U.S. note 2(j) to subchapter III of chapter 99 of the HTSUS in numerical sequence:

"2. (j) For the purposes of heading 9903.01.10, products of Canada, other than products described in headings 9903.01.11, 9903.01.12, and 9903.11.13, and other than products for personal use included in accompanied baggage of persons arriving in the United States, shall be subject to an additional 25% *ad valorem* rate of duty. For the purposes of heading 9903.01.13, the covered products of Canada shall be subject to an additional 10% *ad valorem* rate of duty. Notwithstanding U.S. note 1 to this subchapter, all products of Canada that are subject to the additional *ad valorem* rate of duty imposed by headings 9903.01.10 and 9903.01.13 shall also be subject to the general rates of duty imposed on products of Canada entered under subheadings in chapters 1 to 97 of the tariff schedule.

The additional duties imposed by headings 9903.01.10 and 9903.01.13 that apply to products of Canada include both goods of Canada under the rules set

forth in part 102, title 19 of the Code of Federal Regulations, as applicable, as well as goods for which Canada was the last country of substantial transformation prior to importation into the United States.

Products of Canada that are eligible for special tariff treatment under general note 3(c)(i) to the tariff schedule, or that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99, shall be subject to the additional *ad valorem* rate of duty imposed by headings 9903.01.10 and 9903.01.13.

The additional duties imposed by headings 9903.01.10 and 9903.01.13 shall not apply to goods for which entry is properly claimed under a provision of chapter 98 of the tariff schedule pursuant to applicable regulations of U.S. Customs and Border Protection ("CBP"), and whenever CBP agrees that entry under such a provision is appropriate, except for goods entered under heading 9802.00.80; and subheadings 9802.00.40, 9802.00.50, and 9802.00.60. For subheadings 9802.00.40, 9802.00.50, and 9802.00.60, the additional duties apply to the value of repairs, alterations, or processing performed (in Canada), as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article assembled abroad (in Canada), less the cost or value of such products of the United States, as described.

Products of Canada that are provided for in headings 9903.01.10 or 9903.01.13 shall continue to be subject to antidumping, countervailing, or other duties, taxes, fees, exactions and charges that apply to such products, as well as to the additional *ad valorem* rate of duty imposed by headings 9903.01.10 and 9903.01.13.

Products of Canada that are provided for in headings 9903.01.10 and 9903.01.13 and that are otherwise eligible for the administrative exemption from duty and certain taxes at 19 U.S.C. 1321(a)(2)(C)—known as "*de minimis*" exemption—may continue to qualify for the exemption, but the *de minimis* exemption shall cease to be available for such articles upon notification by the Secretary of Commerce, in consultation with the Secretary of the Treasury, to the President that adequate systems are in place to fully and expeditiously process and collect tariff revenue applicable for covered articles otherwise eligible for the *de minimis* exemption.

(k) Heading 9903.01.11 covers only products of Canada, that are donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of title 19 of the U.S. Code, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances."

**FURTHER AMENDED NOTICE OF IMPLEMENTATION OF
ADDITIONAL DUTIES ON PRODUCTS OF THE PEOPLE'S
REPUBLIC OF CHINA PURSUANT TO THE PRESIDENT'S
EXECUTIVE ORDER 14195, IMPOSING DUTIES TO
ADDRESS THE SYNTHETIC OPIOID SUPPLY CHAIN IN
THE PEOPLE'S REPUBLIC OF CHINA**

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

ACTION: Amended notice.

SUMMARY: In order to effectuate the President's Executive Order 14195, "Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China," as amended by the President's Executive Order 14200, "*Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China*," and further amended by the President's March 3, 2025 Executive Order, "*Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China*," which imposed an increase in the specified rates of duty on imports of articles that are products of the People's Republic of China (PRC or China), the Secretary of Homeland Security is amending its February 12, 2025 Notice in the **Federal Register**, *Amended Notice of Implementation of Additional Duties on Products of the People's Republic of China Pursuant to the President's February 1, 2025 Executive Order Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China*, to reflect that appropriate action was needed to modify the Harmonized Tariff Schedule of the United States (HTSUS) as set out in the Annex to this notice.

DATES: The duties set out in the Annex to this document are effective with respect to products of the PRC (which include products of Hong Kong) that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 4, 2025.

FOR FURTHER INFORMATION CONTACT: Brandon Lord, Executive Director, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, (202) 325-6432 or by email at traderemedy@cbp.dhs.gov. Susan Thomas, Executive Director, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs and Border Protection, (202) 344-3401 or by email at traderemedy@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION: On January 20, 2025, the President declared a national emergency with respect to the grave

threat to the United States posed by the influx of illegal aliens and drugs into the United States in Proclamation 10886 (Declaring a National Emergency at the Southern Border). *See* National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA).

On February 1, 2025, the President expanded the scope of the national emergency declared in that proclamation to cover the failure of the People's Republic of China (PRC or China) government to arrest, seize, detain, or otherwise intercept, chemical precursor suppliers, money launderers, other transnational criminal organizations, criminals at large, and drugs. In addition, the President determined that this failure to act on the part of the PRC constitutes an unusual and extraordinary threat, which has its source in substantial part outside the United States, to the national security, foreign policy, and economy of the United States. To address this threat, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the NEA, section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), and 3 U.S.C. 301, the President imposed ad valorem tariffs on all imports that are products of the PRC, excluding those encompassed by 50 U.S.C. 1702(b). *See* Executive Order 14195 (90 FR 9121) of February 1, 2025. Specifically, Executive Order 14195 adjusted duties on imported products of the PRC, by imposing, consistent with law, an additional 10 percent ad valorem rate of duty.

On February 5, 2025, the Secretary of Homeland Security issued a notice in the **Federal Register**, *Implementation of Additional Duties on Products of the People's Republic of China Pursuant to the President's February 1, 2025 Executive Order Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China* (hereinafter referred to as the "China Duties Notice") (90 FR 9038) to reflect the appropriate action that was needed to modify the Harmonized Tariff Schedule of the United States (HTSUS), as set out in the Annex to that notice, to implement the additional duties imposed by Executive Order 14195.

Subsequently, on February 5, 2025, the President amended subsection (g) of section 2 of Executive Order 14195, to modify the application of 19 U.S.C. 1321 to goods covered by subsection (a) of section 2 of Executive Order 14195. *See* Executive Order 14200, *Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China* (February 5, 2025). Specifically, as amended, subsection (g) of section 2 of Executive Order 14195 provides that duty-free *de minimis* treatment under 19 U.S.C. 1321 is available for otherwise eligible covered articles described in the Executive Order, but shall cease to be available for such articles upon notification by the Secretary of Commerce, in consultation with the Secretary of the Treasury, to the President that adequate systems are in place to fully

and expediently process and collect tariff revenue applicable pursuant to subsection (a) of section 2 of the Executive Order for covered articles otherwise eligible for *de minimis* treatment.

To effectuate the changes made by Executive Order 14200, DHS republished its China Duties Notice in its entirety with changes as needed to implement Executive Order 14195 as amended by Executive Order 14200. *See Amended Notice of Implementation of Additional Duties on Products of the People's Republic of China Pursuant to the President's February 1, 2025 Executive Order Imposing Duties To Address the Synthetic Opioid Supply Chain in the People's Republic of China* (90 FR 9431 February 12, 2025) (hereinafter “the February 12, 2025 CBP Notice”).

Executive Order 14195 directed the Secretary of Homeland Security, to determine and implement the necessary modifications to the Harmonized Tariff Schedule of the United States (HTSUS), consistent with law, to effectuate the Executive Order.

In order to implement the rates of duty imposed by Executive Order 14195, as amended by Executive Order 14200, effective on 12:01 a.m. eastern standard time on February 4, 2025, subchapter III of chapter 99 of the HTSUS was modified by the Annex to the February 12, 2025 CBP Notice.

Executive Order 14195, as amended by Executive Order 14200 and implemented by modifications to the HTSUS announced in the Annex to the February 12, 2025 CBP Notice, has been further modified by the President's March 3, 2025 Executive Order, “*Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China*”. The new E.O. increases the additional tariff rate from 10 percent to 20 percent for covered products of the PRC (which include products of Hong Kong) that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 4, 2025.

The Annex to this notice modifies the Harmonized Tariff Schedule of the United States to provide for the increase of the tariff rate from 10 percent to 20 percent consistent with Executive Order [insert title]. Articles that are the products of China, which include products of Hong Kong in accordance with Executive Order 13936 on Hong Kong Normalization (*See* 85 FR 43413 (July 17, 2020)), excluding those encompassed by 50 U.S.C. 1702(b), that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 4, 2025, will be subject to the additional *ad valorem* rate of duty provided for in new HTSUS heading 9903.01.24, except that goods entered for consumption, or withdrawn from warehouse for consumption, after 12:01 a.m. eastern

standard time on February 4, 2025, and before 12:01 a.m. eastern standard time on March 7, 2025, that were loaded onto a vessel at the port of loading, or in transit on the final mode of transport prior to entry into the United States, before 12:01 a.m. eastern time on February 1, 2025, shall not be subject to such additional duty only if the importer certifies to CBP that the goods so qualify by declaring HTSUS heading 9903.01.23. The exception for goods that were in transit before February 1, 2025 is time limited, to prevent importers from abusing this provision when it is no longer realistic due to the passage of time, as provided in HTSUS heading 9903.01.23, and will only apply to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 4, 2025, and before 12:01 a.m. eastern standard time on March 7, 2025.

U.S. note 2(s) is amended to reflect that HTSUS heading 9903.01.20 applies to products of China and Hong Kong entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time February 4, 2025, and prior to 12:01 a.m. eastern standard time on March 4, 2025.

Imported products of China that are encompassed by 50 U.S.C. 1702(b) will not be subject to the additional ad valorem duty provided for in new HTSUS heading 9903.01.24, but such qualifying products, other than products for personal use included in accompanied baggage of persons arriving in the United States, must be declared and entered under HTSUS heading 9903.01.21 or HTSUS heading 9903.01.22. Specifically, HTSUS heading 9903.01.21 covers products encompassed by 50 U.S.C. 1702(b)(2) and HTSUS heading 9903.01.22 covers products encompassed by 50 U.S.C. 1702(b)(3).¹

The additional *ad valorem* duty provided for in new HTSUS heading 9903.01.24 applies in addition to all other applicable duties, taxes, fees, exactions, and charges.

Further, pursuant to Executive Order 14200, the administrative exemption from duty and certain taxes at 19 U.S.C.

¹ 50 U.S.C. 1702(b)(1) covers “postal, telegraphic, telephonic, or other personal communication[s], which do[] not involve a transfer of anything of value,” and hence does not encompass any imported articles of merchandise. 50 U.S.C. 1702(b)(4) covers “transactions ordinarily incident to travel to or from any country, including [1] importation of accompanied baggage for personal use, [2] maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and [3] arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.” Only the first of the three categories of exceptions covered by 50 U.S.C. 1702(b)(4)—products for personal use included in accompanied baggage of persons arriving in the United States—encompasses imported articles of merchandise, and such articles are excluded from the scope of the additional *ad valorem* duties provided for in new HTSUS headings 9903.01.20 and 9903.01.24 by the terms of those headings and U.S. note 2(u).

1321(a)(2)(C)—known as the “*de minimis*” exemption—continues to be available for articles covered by heading 9903.01.24 that are otherwise eligible for the exemption, including for eligible articles sent to the United States through the international postal network, but shall cease to be available for such articles upon notification by the Secretary of Commerce, in consultation with the Secretary of the Treasury, to the President that adequate systems are in place to fully and expediently process and collect tariff revenue applicable to articles covered by heading 9903.01.24 otherwise eligible for the “*de minimis*” exemption. Accordingly, articles that are the product of China, including products of Hong Kong, that are eligible for the *de minimis* exemption and are covered by heading 9903.01.24 may continue to request *de minimis* entry and clearance until such time as the Secretary of Commerce, in consultation with the Secretary of the Treasury, so notifies the President and further guidance is provided.

As of February 10, 2025, there will be no retroactive application of these changes for any shipments that would have otherwise qualified for *de minimis* treatment based on Executive Order 14200, “*Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People’s Republic of China.*”

Products of China that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99 shall be subject to the additional *ad valorem* rate of duty imposed by heading 9903.01.24.

The additional duties imposed by heading 9903.01.24 shall not apply to goods for which entry is properly claimed under a provision of chapter 98 of the tariff schedule pursuant to applicable regulations of U.S. Customs and Border Protection (“CBP”), and whenever CBP agrees that entry under such a provision is appropriate, except for goods entered under heading 9802.00.80; and subheadings 9802.00.40, 9802.00.50, and 9802.00.60. For subheadings 9802.00.40, 9802.00.50, and 9802.00.60, the additional duties apply to the value of repairs, alterations, or processing performed (in the PRC), as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article assembled abroad (in the PRC), less the cost or value of such products of the United States, as described.

Articles that are products of the PRC, excluding those encompassed by 50 U.S.C. 1702(b), except those that are eligible for admission to a foreign trade zone under “domestic status” as defined in 19 CFR 146.43, and are admitted into a United States foreign trade zone on or after 12:01 a.m. eastern standard time on February 4, 2025, must be admitted as “privileged foreign status” as defined in 19 CFR 146.41. Such articles will be subject, upon entry for consumption, to

the duties imposed by the Executive Order and the rates of duty related to the classification under the applicable HTSUS heading or subheading in effect at the time of admission into the United States foreign trade zone.

No drawback shall be available with respect to the additional duties imposed pursuant to the Executive Order.

KRISTI NOEM,
Secretary.

Annex

To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 4, 2025, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.01.24 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/ Subheading”, “Article Description”, “Rates of Duty 1—General”, “Rates of Duty 1— Special” and “Rates of Duty 2”, respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
“9903.01.24 	Except for products described in headings 9903.01.21, 9903.01.22, or 9903.01.23 articles the product of China and Hong Kong, as provided for in U.S. note 2(u) to this subchapter.	The duty provided in the applicable subheading + 20%.	The duty provided in the applicable subheading + 20%.	No change”.

2. by inserting the following new U.S. note 2(u) to subchapter III of chapter 99 of the HTSUS in numerical sequence:

“2. (u) For the purposes of heading 9903.01.24, products of China and Hong Kong entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m., eastern standard time on March 4, 2025, other than products described in heading 9903.01.21, heading 9903.01.22, heading 9903.01.23, and other than products for personal use included in accompanied baggage of persons arriving in the United States, shall be subject to an additional 20% *ad valorem* rate of duty. Notwithstanding U.S. note 1 to this subchapter, all products of China and Hong Kong that are subject to the additional *ad valorem* rate of duty imposed by heading 9903.01.24 shall also be subject to the general rates of duty imposed on products of China and Hong Kong entered under subheadings in chapters 1 to 97 of the tariff schedule. Products of China and Hong Kong that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99 shall be subject to the additional *ad valorem* rate of duty imposed by heading 9903.01.24.

The additional duties imposed by heading 9903.01.24 shall not apply to goods for which entry is properly claimed under a provision of chapter 98 of the tariff schedule pursuant to applicable regulations of U.S. Customs and Border Protection (“CBP”), and whenever CBP agrees that entry under such a provision is appropriate, except for goods entered under heading 9802.00.80; and subheadings 9802.00.40, 9802.00.50, and 9802.00.60. For subheadings 9802.00.40, 9802.00.50, and 9802.00.60, the additional duties apply to the value of repairs, alterations, or processing performed (in China and Hong Kong), as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article assembled abroad (in China and Hong Kong), less the cost or value of such products of the United States, as described.

Products of China and Hong Kong that are provided for in heading 9903.01.24 shall continue to be subject to antidumping, countervailing, or other duties, taxes, fees, exactions and charges that apply to such products, as well as to the additional *ad valorem* rate of duty imposed by heading 9903.01.24.

Products of China and Hong Kong that are provided for in heading 9903.01.24 and that are otherwise eligible for the administrative exemption from duty and certain taxes at 19 U.S.C. 1321(a)(2)(C)—known as “*de minimis*” exemption—may continue to qualify for the exemption, but the *de minimis* exemption shall cease to be available for such articles upon notification by the Secretary of Commerce, in consultation with the Secretary of the Treasury, to the President that adequate systems are in place to fully and expediently process and collect tariff revenue applicable for covered articles otherwise eligible for the *de minimis* exemption.

3. by amending subdivision (s) of note 2 to insert “which have been entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time February 4, 2025, and prior to 12:01 a.m. eastern standard time on March 4, 2025,” after “products of China and Hong Kong” in the first sentence in the first paragraph of the subdivision.

AGENCY INFORMATION COLLECTION ACTIVITIES:

Extension; Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers (CBP Form 7401)

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 May 5, 2025) 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 1651-0086 in the subject line and the agency name. Please submit written comments and/or suggestions in English. 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: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers.

OMB Number: 1651-0086.

Form Number: 7401.

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

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: This collection of information is used by CBP to make distributions of funds pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). 19 U.S.C. 1675c (repealed by the Deficit Reduction Act of 2005, Pub. L. 109-171, title VII, § 7601(a) (Feb. 8, 2006)). This Act prescribes the administrative procedures under which antidumping and countervailing duties assessed on imported products are distributed to affected domestic producers (ADPs) that petitioned for or supported the issuance of the order under which the duties were assessed. The amount of any distribution afforded to these domestic producers is based on certain qualifying expenditures that they incur after the issuance of the order or finding up to the effective date of the CDSOA's repeal, October 1, 2007. This distribution is known as the continued dumping and subsidy offset. The claims process for the CDSOA program is provided for in 19 CFR 159.61 and 159.63.

In order to make a claim under the CDSOA, CBP Form 7401 may be used. This form is accessible at: <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=8776895>.

Type of Information Collection: CBP Form 7401.

Estimated Number of Respondents: 300.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 600.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 600.

Dated: February 26, 2025.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:**Extension; Guarantee of Payment (CBP Form I-510)**

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 May 5, 2025) 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 1651-0127 in the subject line and the agency name. Please submit written comments and/or suggestions in English. 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: Guarantee of Payment.

OMB Number: 1651-0127.

Form Number: I-510.

Current Actions: Extension without change.

Type of Review: Extension without change.

Affected Public: Businesses.

Abstract: Section 253 of the Immigration and Nationality Act (INA), 8 U.S.C. 1283, requires that an alien crewman found to be or suspected of having any of the diseases named in section 255 of the INA must be hospitalized or otherwise treated, with the associated expenses paid by the carrier. The owner, agent, consignee, commanding officer, or master of the vessel or aircraft must complete CBP Form I-510, *Guarantee of Payment*, that certifies the guarantee of payment for medical and other related expenses required by section 253 of the INA. No vessel or aircraft can be granted clearance until such expenses are paid or the payment is appropriately guaranteed.

CBP Form I-510 collects information such as the name of the owner, agent, commander officer or master of the vessel or aircraft; the name of the crewmember; the port of arrival; and signature of the guarantor. This form is provided for by 8 CFR 253.1(a) and is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=I-510>.

Type of Information Collection: CBP Form I-510.

Estimated Number of Respondents: 100.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 100.

Estimated Time per Response: 0.083 hours.

Estimated Total Annual Burden Hours: 8.

Dated: February 26, 2025.

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

U.S. Court of International Trade

Slip Op. 25–21

GRUPO ACERERO S.A. de C.V., GRUPO SIMEC S.A.B. de C.V., et al.,
Plaintiffs, and GERDAU CORSA, S.A.P.I de C.V., Plaintiff-Intervenor,
v. UNITED STATES, Defendant, and REBAR TRADE ACTION COALITION,
Defendant-Intervenor.

Before: Stephen Alexander Vaden, Judge
Consol. Court No. 1:22-cv-00202 (SAV)

[Sustaining Commerce’s Remand Determination.]

Dated: February 28, 2025

James L. Rogers, Jr., Nelson, Mullins, Riley & Scarborough LLP, of Greenville, SC,
for Plaintiff Grupo Simec S.A.B. de C.V.

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Craig A. Lewis, Hogan Lovells US LLP, of Washington, DC, for Plaintiff-Intervenor
Gerdau Corsa, S.A.P.I de C.V. With him on the briefs were *Jonathan T. Stoele* and
Nicholas R. Sparks.

Kara M. Westercamp, Trial Attorney, Commercial Litigation Branch, Civil Division,
U.S. Department of Justice, of Washington, DC, for Defendant United States. With her
on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General,
Patricia M. McCarthy, Director, Commercial Litigation Branch, *L. Misha Preheim*,
Assistant Director, Commercial Litigation Branch, and *Ruslan Klafehn*, Attorney,
Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department
of Commerce.

John R. Shane, Wiley Rein LLP, of Washington, DC, for Defendant-Intervenor
Rebar Trade Action Coalition. With him on the brief were *Alan H. Price*, and *Maureen
E. Thorson*.

OPINION

Vaden, Judge:

This case concerns the remand determination of an antidumping review conducted during the 2019 coronavirus pandemic. During the original investigation, Grupo Simec S.A.B. de C.V. (Grupo Simec) sought a deadline extension on its supplemental questionnaire to submit information related to its downstream sales. Despite the difficulties stemming from the pandemic, the United States Department of Commerce (Commerce) denied Grupo Simec’s request. The resultant missing information led Commerce to draw an adverse inference using facts available to calculate Grupo Simec’s dumping margin, which in turn impacted the rate for the companies not selected for review.

In the Court's previous opinion, the Court remanded to Commerce to (1) reopen the record and accept Grupo Simec's filing; (2) conduct a new analysis on whether use of an adverse inference is warranted; and (3) reanalyze the non-selected company rate Commerce used in its final determination. Because Commerce complied with the Court's Remand Order and no party objects to Commerce's Remand Determination, the Court **SUSTAINS** the Remand Determination.

BACKGROUND

The Court presumes familiarity with the facts of this case as set out in its previous opinion and now recounts those facts relevant to the review of the Remand Determination. *See Grupo Acerero S.A. de C.V. v. United States*, 48 CIT __, 698 F. Supp. 3d 1320, 1322–1331 (2024).

I. Original Determination

On November 6, 2014, Commerce issued an antidumping duty order on concrete reinforcing bar from Mexico. *Steel Concrete Reinforcing Bar from Mexico: Antidumping Duty Order*, 79 Fed. Reg. 65,925 (Dep't of Com. Nov. 6, 2014). Commerce began its annual review of the order on January 6, 2021. *See Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews*, 86 Fed. Reg. 511, 513 (Dep't of Com. Jan. 6, 2021). Commerce selected Grupo Simec and Deacero S.A.P.I. de C.V. (Deacero) as mandatory respondents. *See Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020* (Preliminary Results), 86 Fed. Reg. 68,632, 68,633 (Dep't of Com. Dec. 3, 2021). Sidertul S.A. de C.V. (Sidertul)¹ and Grupo Acerero S.A. de C.V. (Grupo Acerero) remained subject to the review as non-selected companies. *Id.*

Commerce's treatment of Grupo Simec throughout the investigation was arbitrary. It "failed to appreciate the severe disruptions COVID-19 caused in Simec's ability to respond ..." to Commerce's inquiries. *Grupo Acerero*, 48 CIT __, 698 F. Supp. 3d at 1332. These disruptions included the deaths of three key employees from COVID-19 and the hospitalization of a fourth. Pls.' Br. at 5, ECF No. 43; Grupo Simec Third A&D Questionnaire Extension Req. (Aug. 16, 2021), J.A. at 4,914, ECF No. 68. Despite these calamities, Grupo Simec sought to complete its questionnaires by hiring outside counsel. Grupo Simec Second A&D Questionnaire Extension Req. (Aug. 16, 2021) at 2, J.A. at 4,911, ECF No. 68. Outside counsel could not

¹ Plaintiff-Intervenor Gerdau Corsa S.A.P.I. de C.V. is the successor-in-interest to Sidertul as of December 1, 2021. Joint Mot. of Grupo Acerero and Gerdau Corsa at 1 n.1, ECF No. 44. Sidertul participated in the administrative review as a foreign producer but was not selected for individual examination. *Id.*

aid Grupo Simec, however, because COVID-19 restrictions in Mexico and India prevented him from travelling to Simec's Mexican facilities. *Id.* These compounding complications made completing Commerce's extensive questionnaires almost impossible for Grupo Simec. Commerce was aware that Grupo Simec's situation was unlike any other COVID-era respondent. *See* Oral Arg. Tr. at 29:16–19, ECF No. 71 (The Court: "[A]re you aware of any other administrative review engaged in during this time period in which multiple key employees died during the administrative review?" Ms. Westercamp: "I am not, Your Honor."). Regardless, Commerce granted little grace.

Grupo Simec's fellow mandatory respondent had things much better. Deacero did not experience any deaths or hospitalizations of key personnel. When it asked for extensions to answer its questionnaires, Deacero's requests focused on more general problems regarding COVID-19 restrictions in Mexico — the types of inconveniences that would affect any respondent in the COVID era. *See, e.g.*, Deacero Second Suppl. Questionnaire Extension Req. (Oct. 13, 2021) at 1–3, J.A. at 6,614–16, ECF No. 68. Some of Deacero's extension requests did not mention COVID-19 at all. *See, e.g., id.* Nonetheless, "Commerce gave Simec five fewer days than Deacero received to respond to 175 more supplemental questions than Deacero answered." *Grupo Acerero*, 48 CIT ___, 698 F. Supp. 3d at 1338.

Relevant to the Remand Determination, Grupo Simec asked for an extension to complete a questionnaire on September 6, 2021. Extension Request for Downstream Sales Data (Sept. 6, 2021), J.A. at 4,954–55, ECF No. 68. Despite Grupo Simec's travails, Commerce denied the extension request and effectively ended Grupo Simec's ability to submit information to the agency. Denial of Extension (Sept. 7, 2021), J.A. at 4,958, ECF No. 68. On October 18, 2021, Grupo Simec attempted to submit what it labeled "Additional Factual Information" to Commerce, consisting of its downstream sales data as well as some translations "inadvertently stripped by computer operation from the documents in the Commerce ACCESS filing process." Submission of Additional Information at 2 (Oct. 18, 2021), J.A. at 6,625–28, ECF No. 68. Because Commerce originally requested this information in the supplemental questionnaire due on September 7, 2021, Commerce rejected the submission as untimely. Rejection of Untimely Filed Information (Oct. 19, 2021), J.A. at 7,108, ECF No. 68.

On December 3, 2021, Commerce issued its Preliminary Results. Preliminary Results, 86 Fed Reg. 68,632; Preliminary Decision Memorandum (PDM), J.A. at 7,218, ECF No. 68. It found "deficiencies [that] covered all aspects of Grupo Simec's responses[.]" PDM at 4, J.A. at 7,221, ECF No. 68. Grupo Simec's supplemental questionnaire

responses “continued to fail to provide information Commerce requested.” Pervasive errors remained in Grupo Simec’s home market sales, U.S. sales, and downstream sales data. *Id.* at 5. Commerce concluded that “it d[id] not have any sales-related information that can be used as a basis for conducting a dumping analysis,” prompting it to draw an adverse inference using facts otherwise available. *Id.* at 7. It assigned a preliminary 66.70 percent dumping margin to Grupo Simec. *Id.* at 9. In its Final Results, Commerce maintained substantially the same position and continued to assess a 66.70 percent dumping margin. *See Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2019–2020*, 87 Fed. Reg. 34,848, 34,850 (Dep’t of Com. June 8, 2022) (Final Results). Commerce also set a 33.35 percent dumping margin for the non-selected company rate. *Id.*

On August 8, 2022, Grupo Simec filed suit in this Court. Compl., ECF No. 8. It challenged Commerce’s drawing an adverse inference using facts available in the Final Results. *See id.* ¶¶ 35–52; *see also* Pls.’ Mot. for J. on the Agency R. at 18–40, ECF No. 43. The Court held oral argument on December 15, 2023. ECF No. 64. Grupo Simec’s counsel represented to the Court that the documents Grupo Simec sought to file on October 18 were the same as those it would have filed if Commerce granted its September 6 extension request. Oral Arg Tr. at 19:20–25, ECF No. 71 (The Court: “[D]o I hear you representing to the Court that essentially what you did on October 18th was attempt to give [Commerce] ... the same thing that they would have received in the first ten days of September had they given you a couple of additional days?” Mr. Rogers: “Yes, Your Honor.”). All parties agreed that, should the Court remand on the issue of Commerce’s failure to grant an extension of time to Grupo Simec, it should stay any consideration of the non-selected company rate until after remand. *Id.* at 83:12–19, 94:2–7, 98:13–20. Any change in Grupo Simec’s rate would necessarily affect the non-selected company rate. *Id.* at 94:7–11 (Government counsel noting that a change in Simec’s rate would “necessarily flow [and affect] the non-selected rate”); *id.* at 98:20–22 (Coalition’s counsel agreeing that, if the case were remanded, the non-selected company rate issue “could go away depending on what happens on remand.”).

II. Remand

This Court agreed with the Plaintiffs’ objections and remanded Commerce’s Final Results. *Grupo Acerero*, 48 CIT __, 698 F. Supp. 3d at 1338–39. Commerce had “failed to appreciate the severe disruptions COVID-19 caused in [Grupo Simec’s] ability to respond[,]” and

its “drawing of adverse inferences[] and use of a simple average to determine the non-examined company rate all flow[ed] from Commerce’s unjustified decision to reject [Grupo Simec’s] final extension request.” *Id.* at 1332. To rectify this abuse of discretion, the Court ordered Commerce to perform three tasks on remand: (1) accept the information Grupo Simec proffered on October 18, 2021, and request other information as needed; (2) conduct a new analysis to determine if the use of facts available or the drawing of an adverse inference is warranted; and (3) reanalyze the non-selected company rate and make any needed adjustments. *Id.* at 1338.

On remand, Commerce allowed Grupo Simec to submit its October 18, 2021 filing, sought additional information, and found “that there are no gaps in the record ... such that the application of [adverse facts available] would be warranted.” Remand Determination at 2, ECF No. 77. Grupo Simec’s submission filled-in the missing information, which “ma[de] it inappropriate for Commerce [to] apply [an adverse inference].” *Id.* at 27. Consequently, Commerce reduced the dumping margin for Grupo Simec from 66.70 percent to zero percent. *Compare* Final Results, 87 Fed. Reg. at 34,850, *with* Remand Determination at 28, ECF No. 77. The dramatic drop in Grupo Simec’s dumping margin had a similar effect on the rates applicable to non-selected companies. The non-selected company rate declined from 33.35 percent in the original review to zero percent after remand. *Compare* Final Results, 87 Fed. Reg. at 34,850, *with* Remand Determination at 28, ECF No. 77.

On November 21, 2024, Commerce filed the Remand Determination with the Court. Remand Determination, ECF No. 77. Plaintiffs support the Remand Determination “without qualification.” Pls.’ Joint Comments on Commerce’s Final Results of Redetermination Pursuant to Court Remand (Pls.’ Comments) at 2, ECF No. 79. Commerce agrees with Plaintiffs, stating that its “remand redetermination ... complies with the remand opinion and is supported by substantial evidence and otherwise in accordance with law.” Def.’s Resp. to Pls.’ and Pl.-Intervenor’s Joint Comments on the Remand Redetermination (Def.’s Resp.) at 2, ECF No. 80. Although the Defendant-Intervenor disagrees with the Remand Determination, it “has determined not to file papers in opposition or further challenge the remand results.” Pls.’ Comments at 2, ECF No. 79. In other words, the Remand Determination returns to the Court uncontested. *See id.*

JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction under 28 U.S.C. § 1581, which grants authority to review challenges to antidumping order final determina-

tions. The Court must set aside any of Commerce’s “determination[s], finding[s], or conclusion[s]” found to be “unsupported by substantial evidence on the record, or otherwise not in accordance with law” 19 U.S.C. § 1516a(b)(1)(B)(i); *see also* 28 U.S.C. § 2640(b) (noting that § 516A civil actions are reviewed under 19 U.S.C. § 1516a(b)). “[T]he question is not whether the Court would have reached the same decision on the same record[;] rather, it is whether the administrative record as a whole permits Commerce’s conclusion.” *New Am. Keg v. United States*, No. 1:20-cv-00008, 45 CIT __, 2021 Ct. Intl. Trade LEXIS 34, at *15 (March 23, 2021). Substantial evidence “means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938) (citations omitted). “The substantiality of evidence must take into account whatever in the record fairly detracts from its weight.” *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951). Additionally, “The court reviews remand determinations for compliance with the court’s [remand] order.” *Bonney Forge Corp. v. United States*, No. 1:20-cv-03837, 47 CIT __, 2023 Ct. Intl. Trade LEXIS 125, at *7 (Aug. 21, 2023) (quoting *Nakornthai Strip Mill Pub. Co. Ltd. v. United States*, 32 CIT 1272, 1274 (2008)).

DISCUSSION

The Court ordered Commerce to: (1) reopen the record and accept Grupo Simec’s October 18, 2021 filing; (2) conduct a new analysis to determine if adverse inferences are warranted; and (3) reanalyze the non-selected company rate and make any needed adjustments. Commerce did so; and for the reasons below, the Court **SUSTAINS** Commerce’s Remand Determination.

Commerce complied with the Remand Order’s instruction to reopen the record. It “requested Grupo Simec to file: (1) the October 18, 2021, submission; (2) revised supplemental questionnaire responses to the Section A-C and Sections A&D supplemental questionnaires; and (3) any other information that Grupo Simec believed would cure deficiencies in their reporting during the administrative review.” Remand Determination at 23, ECF No. 77. Grupo Simec submitted all the requested documents, and Commerce used the information to reexamine both its original adverse inference determination and the non-selected company rate. *Id.* at 27–28.

I. Adverse Inferences

After Commerce reopened the record and sought new information, it concluded that resorting to facts available with an adverse inference was not warranted. When foreign merchandise is sold in the United States at less than its fair value — thereby injuring a domes-

tic industry — the law allows Commerce to impose antidumping duties on the merchandise. Antidumping duties equal the amount by which the foreign market value, known as the “normal value,” of the merchandise exceeds the U.S. price of the merchandise. 19 U.S.C. § 1677b(a). This difference is called the dumping margin. 19 U.S.C. § 1677(35)(A). When Commerce is missing data necessary to calculate the dumping margin, the antidumping statute provides a two-part process to fill the gap. *See* 19 U.S.C. § 1677e(a). The statute enables Commerce to use “facts otherwise available” in place of the missing information if:

- (1) Necessary information is not available on the record, or
- (2) An interested party or any other person —
 - (A) Withholds information that has been requested by [Commerce],
 - (B) Fails to provide such information by the deadlines for submission of the information or in the form and manner requested, . . .
 - (C) Significantly impedes a proceeding under this subtitle, or
 - (D) Provides such information but the information cannot be verified[.]

19 U.S.C. § 1677e(a).

Separately, 19 U.S.C. § 1677e(b) permits those facts otherwise available to be chosen with an adverse inference if “an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from [Commerce].” Although § 1677e(a) and § 1677e(b) are often collapsed into “adverse facts available” or “AFA,” the two statutory processes require distinct analyses rather than the single analysis implied by the term “AFA.” Commerce first must determine that it is missing necessary information; and, if it wishes to fill the resulting gap with facts that reflect an adverse inference against an interested party, Commerce must secondarily determine that the party has failed to cooperate by not acting to the best of its ability. *See Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F.3d 1333, 1346 (Fed. Cir. 2011). The purpose of these statutory provisions is “to provide respondents with an incentive to cooperate.” *F. Lli de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2010).

Originally, Commerce applied an adverse inference because it rejected Grupo Simec’s October 18 filing, leaving a gap in the record. *See* Issues and Decision Memorandum at 24, J.A. at 7,736, ECF No. 68

("[W]ithout a complete record, Commerce is unable to make adjustments to Grupo Simec's responses[.]"). On remand, Commerce accepted the October 18 filing and sent supplemental questionnaires to address any remaining deficiencies in the record. *See* Remand Determination at 23, ECF No. 77. Commerce found that Grupo Simec's "submissions placed on the record of this remand proceeding ... addressed previous gaps in the record" *Id.* at 27. Because there was no longer any gap, Commerce correctly determined that it would be "inappropriate for Commerce [to] apply [adverse inferences.]" *Id.*; *see* 19 U.S.C. § 1677e(a) (requiring there to be missing information from the record as a prerequisite to drawing an adverse inference). Therefore, Commerce complied with the Remand Order when it reopened the record, analyzed the newly submitted data, and determined that new data filled all remaining gaps in the record. *See Grupo Acerero*, 48 CIT __, 698 F. Supp. 3d at 1338–39.

II. Non-Selected Company Rate

Commerce's recalculation of the non-selected company rate also complied with the Remand Order. Under 19 U.S.C. § 1673d(c)(5)(B), if the weighted-average dumping margins for investigated exporters are zero or de minimis, Commerce "may use any reasonable method to establish the estimated all-others rate" As noted at oral argument, any change in Grupo Simec's rate will necessarily affect the non-selected company rate. Oral Arg. Tr. at 94:7–11, ECF No. 71. Consequently, this Court instructed Commerce to reanalyze the non-selected company rate and make any needed adjustments. *Grupo Acerero*, 48 CIT __, 698 F. Supp. 3d at 1338.

On remand, Commerce reanalyzed the rates for Grupo Acerero and Sidertul — the non-selected companies — "because the rate for non-selected companies was based, in part, on Grupo Simec's weighted-average dumping margin." Remand Determination at 2, ECF No. 77. Commerce noted that, "because of the change in Grupo Simec's calculated margin, the non-selected companies' rate has also changed [so that] each [is] assigned a weighted-average dumping margin of 0.00 percent in accordance with [19 U.S.C. § 1673d(c)(5)(B)]." *Id.* at 28. By recalculating the non-selected company rate after modifying Grupo Simec's dumping margin, Commerce complied with the Remand Order. *See Grupo Acerero*, 48 CIT __, 698 F. Supp. 3d at 1338–39. No party objects to the new calculation. *See* Pls.' Comments at 2, ECF No. 79; Def.'s Resp. at 2, ECF No. 80.

CONCLUSION

When reviewing a remand determination, the Court looks for compliance with both the law and the remand order. Here, Commerce complied with both; and substantial evidence supports its Determination. As no party objects, the Court **SUSTAINS** Commerce's uncontested Remand Determination.

SO ORDERED.

Dated: February 28, 2025
New York, New York

/s/ Stephen Alexander Vaden
STEPHEN ALEXANDER VADEN, JUDGE

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