

No. 22-_____

IN THE
Supreme Court of the United States

ACQUISITION 362, LLC, DBA STRATEGIC IMPORT SUPPLY,
Petitioner,

v.

UNITED STATES,
Respondent.

**On Petition for Writ of Certiorari to the United
States Court of Appeals for the Federal Circuit**

PETITION FOR WRIT OF CERTIORARI

Heather L. Marx
Counsel of Record
Thomas Wallrich
Cassandra Jacobsen
COZEN O'CONNOR
33 South Sixth Street
Suite 3800
Minneapolis, MN 55402
hmarx@cozen.com
(612) 260-9004

Counsel for Petitioner
Acquisition 362, LLC dba
Strategic Import Supply

QUESTIONS PRESENTED

This petition asks the Court to consider the following questions:

Whether the Federal Circuit Court of Appeals' decision that Petitioner's protests concerning rate and refund determinations were untimely and the Court of International Trade lacked subject matter jurisdiction pursuant to 28 U.S.C. § 1581(a) essentially eliminates one of the statutory means by which importers can file protests under 19 U.S.C. § 1514(c)(3)(B) and 19 C.F.R. § 174.12(e)(2)?

Whether the Federal Circuit Court of Appeals erred in concluding that Petitioner could have invoked jurisdiction under 28 U.S.C. § 1581(a) by submitting timely protests of the liquidation of its entries even though Petitioner lacked the grounds to file protests at an earlier time?

Whether the Federal Circuit Court of Appeals erred in affirming the Court of International Trade's decision dismissing Petitioner's action when newly discovered evidence demonstrated that, if subject matter jurisdiction did not lie under 28 U.S.C. § 1581(a), then there were clearly manifestly inadequate remedies available, thus establishing subject matter jurisdiction under 28 U.S.C. § 1581(i)?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Acquisition 362, LLC dba Strategic Import Supply was plaintiff before the United States Court of International Trade and plaintiff-appellant before the United States Court of Appeals for the Federal Circuit.

David and Lily Penn, Inc. owns 10% or more of the stock of Petitioner Acquisition 362, LLC dba Strategic Import Supply.

Respondent United States was defendant before the United States Court of International Trade and defendant-appellee before the United States Court of Appeals for the Federal Circuit.

RELATED CASES

Acquisition 362, LLC dba Strategic Import Supply v. United States, No. 2022-1161, United States Court of Appeals for the Federal Circuit. Judgment Entered February 6, 2023.

Acquisition 362, LLC dba Strategic Import Supply v. United States, No. 20-cv-03762, U.S. Court of International Trade. Judgment Entered April 21, 2021; Order Denying Plaintiff's Motion for Reconsideration and Leave to Amend its Complaint entered September 20, 2021.

TABLE OF CONTENTS

QUESTIONS PRESENTED..... i

PARTIES TO THE PROCEEDING AND RULE
29.6 STATEMENT..... ii

RELATED CASES ii

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIES vi

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 2

JURISDICTION..... 2

CONSTITUTIONAL, STATUTORY AND
REGULATORY PROVISIONS
INVOLVED 3

STATEMENT OF THE CASE..... 3

I. PROCEEDINGS BEFORE THE COURT
OF INTERNATIONAL TRADE 9

II. PROCEEDINGS BEFORE THE
FEDERAL CIRCUIT COURT OF
APPEALS 13

III. REASONS FOR GRANTING THE WRIT..... 15

A. The Decision Below Eliminates
One Of The Statutory Mechanisms

Under Which Importers Can File
Protests. 15

B. The Decision Below Encourages
Premature, Incomplete, Sham
Protest Filings. 19

CONCLUSION..... 23

APPENDIX

Appendix A — Opinion of The United States
Court Of Appeals For The Federal Circuit, Filed
February 6, 2023..... 1a

Appendix B — Opinion And Order of The United
States Court Of International Trade, Filed
September 20, 2021 17a

Appendix C — Opinion Of The United States
Court Of International Trade, Filed April 21,
2021 28a

Appendix D — Statutes and Regulations 40a

19 USC § 1514 40a

19 CFR § 174.12(e) 55a

19 CFR § 174.13 58a

28 U.S.C. § 1581 50a

80 FR 47902..... 61a

82 FR 48051..... 94a

84 FR 28011..... 133a

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Ambassador Div. of Florsheim Shoe v. United States</i> , 748 F.2d 1560 (Fed. Cir. 1984).....	3
<i>Carbon Activated Corp. v. United States</i> , 791 F.3d 1312 (Fed. Cir. 2015).....	21
<i>Lowa, Ltd. v. United States</i> , 5 C.I.T. 81, 561 F.Supp. 441 (1983), <i>aff'd</i> 724 F.2d 121 (Fed. Cir. 1984)	19
<i>Strategic Import Supply v. United States</i> , No. 20-cv-03762	ii
<i>Strategic Import Supply v. United States</i> , No. 2022-1161	ii
<i>United States v. E.H. Bailey & Co.</i> , 32 C.C.P.A. 89 (1944)	20

Statutes

19 U.S.C. § 1500(d)	3
19 U.S.C. § 1514.....	14, 21
19 U.S.C. § 1514(a)	9
19 U.S.C. § 1514(c)(3)	1, 13, 16, 18

19 U.S.C. § 1514(c)(3)(A)	1, 2, 12, 15, 17, 19
19 U.S.C. § 1514(c)(3)(B)	i, 1, 8, 16, 17, 18, 19, 21
19 U.S.C. § 1671(a)(1)	3
19 U.S.C. § 1671d(c).....	3
19 U.S.C. § 1675(a)(1).....	3, 4
28 U.S.C. § 1254(1)	2
28 U.S.C. § 1295(a)(5).....	13
28 U.S.C. § 1581(i)	i, 12, 13, 14
28 U.S.C. § 1581(i)(1)(D).....	11
28 U.S.C. § 1581(a)	i, 1, 2, 9, 13, 15, 20
28 U.S.C. § 1581(c).....	10
28 U.S.C. § 2632.....	9
28 U.S.C. § 2645(c).....	13
Internal Revenue Code section 6621.....	7
Tariff Act of 1930 section 778.....	6
Other Authorities	
19 C.F.R. § 174.3.....	9
19 C.F.R. § 174.12(e).....	1, 10, 11, 13, 16
19 C.F.R. § 174.12(e)(1)	1, 2, 12, 15, 17, 19

19 C.F.R. § 174.12(e)(2)	i, 1, 8, 16, 17, 18, 19
19 C.F.R. § 351.212(a).....	3
19 C.F.R. § 351.212(b)(2)	4
19 C.F.R. § 351.212(e).....	4
19 C.F.R. § 351.213(e)(2)	3
84 FR 28011 (June 17, 2019).....	17
<i>Initiation of Antidumping and</i>	
<i>Countervailing Duty Administrative</i>	
<i>Reviews,</i>	
82 FR 48051 (Oct. 16, 2017).....	5
<i>Countervailing Duty Order on Certain</i>	
<i>Passenger Vehicle and Light Truck</i>	
<i>Tires from the People’s Republic of</i>	
<i>China: Amended Final Results of</i>	
<i>Countervailing Duty Administrative</i>	
<i>Review; 2016, 84 FR 28011 (June 17,</i>	
<i>2019).....</i>	
	5, 6, 7, 8, 11, 13, 17, 18, 19, 21

PETITION FOR WRIT OF CERTIORARI

Petitioner Acquisition 362, LLC dba Strategic Import Supply (“A362”) is an importer that has been deprived of a statutorily-established avenue to challenge the failure by U.S. Customs and Border Protection (“CBP”) to implement the terms of certain Amended Final Result and instructions from the U.S. Department of Commerce International Trade Administration (“Commerce”). Under the decision as it currently stands, two distinct statutory mechanisms to challenge an act by CBP have been essentially collapsed into one and would preclude timely and necessary relief for importers when CBP either fails or refuses to implement Commerce’s directives.

Specifically, 19 U.S.C. § 1514(c)(3)(B) and 19 C.F.R. § 174.12(e)(2) provide two distinct ways to calculate when a protest of action taken by CBP is timely for purposes of establishing jurisdiction for review by the Court of International Trade (“CIT”) under 28 U.S.C. § 1581(a). First, there is the more standard calculation of timeliness for a protest under 19 U.S.C. § 1514(c)(3)(A) and 19 C.F.R. § 174.12(e)(1), which establish that a protest is timely if filed within 180 days following liquidation. Alternatively, there is the separate calculation allowed under 19 U.S.C. § 1514(c)(3)(B) and 19 C.F.R. § 174.12(e)(2), which confirm that a protest is also timely when it is made within 180 days of another decision that is not a decision involving either liquidation or reliquidation. *See* 19 U.S.C. § 1514(c)(3); 19 C.F.R. § 174.12(e).

In its decision in this matter, the United States Court of Appeals for the Federal Circuit essentially eliminated the latter statutory mechanism when it affirmed the CIT's decision that A362's protests were untimely under 19 U.S.C. § 1514(c)(3)(A) and 19 C.F.R. § 174.12(e)(1) and that, as a result, the CIT lacked subject matter jurisdiction pursuant to 28 U.S.C. § 1581(a).

The ramifications of this ruling are widespread, extending to importers across the United States.

OPINIONS BELOW

The opinion of the Federal Circuit Court of Appeals (Appx. 1a) is reported at 59 F.4th 1247 (Fed. Cir. 2023). The CIT opinions from which A362 appealed are reported at 517 F. Supp. 3d 1318, 1321 (Ct. Int'l Trade 2021) (Appx. 28a) and 539 F. Supp. 3d 1251 (Ct. Int'l Trade 2021) (Appx. 17a).

JURISDICTION

The judgment of the court of appeals was entered on February 6, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the appendix to this petition. Appx 40a–137a.

STATEMENT OF THE CASE

Countervailing duties (“CVD”) are imposed when Commerce determines another country is providing “a countervailable subsidy with respect to the manufacture, production, or export” of merchandise imported into the United States. 19 U.S.C. § 1671(a)(1). CVD rates are intended to offset the value of the foreign subsidization and “level the playing field” for domestic industries impacted by subsidies.

When merchandise is subject to a CVD order, the obligation to pay CVD arises upon importation of the merchandise into the United States; however, the precise amount of this obligation is determined after importation. 19 C.F.R. § 351.212(a). The final computation of duties is known as the “liquidation” of those entries. *Id.* § 159.1; *see also* 19 U.S.C. § 1500(d). A CVD order suspends the liquidation of entries covered by the order until such time as the final CVD rate is determined. *See* 19 U.S.C. § 1671d(c).

If an interested party requests it, Commerce is required to review a CVD order for a certain retrospective period. *See* 19 U.S.C. § 1675(a)(1); 19 C.F.R. § 351.213(e)(2). This is known as an administrative review, periodic review, or annual review. *Id.* For merchandise covered by a request for review, Commerce will continue suspending liquidation until the final

CVD rate is determined in the review. *See Ambassador Div. of Florsheim Shoe v. United States*, 748 F.2d 1560, 1565 (Fed. Cir. 1984). Upon the publication of the final results of an administrative review, Commerce lifts the suspension of liquidation for the entries covered by the review and the CVD order and instructs CBP to liquidate those entries at the final CVD rate determined in the review. *See* 19 U.S.C. § 1675(a)(1); 19 C.F.R. § 351.212(b)(2). If the final CVD rate exceeds the cash deposit rate paid by the importer at the time the merchandise entered the United States, the importer will be responsible for paying the difference; conversely, if the final CVD rate is lower than the cash deposit rate paid by the importer at the time the merchandise entered the country, the importer will receive a refund of the overpaid duties. *See* 19 C.F.R. § 351.212(e).

In this case, on August 10, 2015, Commerce issued a CVD order regarding passenger vehicle and light truck tires from China (the “CVD Order”). *See Certain Passenger Vehicle and Light Truck Tires From the People’s Republic of China: Amended Final Affirmative Antidumping Duty Determination and Anti-dumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 47902 (Aug. 10, 2015); *see also* Appx. 61a.

In 2016, A362 imported several entries of passenger vehicle and light truck tires from China that were subject to the CVD Order. Appx. 2a. Upon entry, A362 appropriately deposited payment of the assessed CVD at a rate of 30.61%, the rate assigned to manufacturer Shandong Zhongyi Rubber Co., Ltd.

(“Zhongyi”) at the time the entries were made. Appx. 2a–3a.

In 2017, several interested parties requested that Commerce conduct an administrative review of the CVD Order, and, accordingly on October 16, 2017, Commerce published a Notice of Initiation of administrative review of the CVD Order for forty-two producers / exporters during the period of review spanning August 1, 2016 through July 31, 2017 (the “Period of Review”). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 48051 (Oct. 16, 2017). Appx. 94a. While this administrative review was ongoing, the entries made by A362 in 2016 were liquidated in October and November 2018. Appx. 4a.

As became of significant importance later, Zhongyi (the manufacturer of the tires imported by A362 in 2016 and on which A362 paid a 30.61% duty rate at the time of entry) is the same entity and uses the same manufacturer codes as Dongying Zhongyi Rubber Co., Ltd. (“Dongying Zhongyi”). Having undergone a name change and attempting to minimize potential redundancies, Zhongyi withdrew the separate request it had filed in 2017 for administrative review – an action that should have had no impact on its entries since Dongying Zhongyi remained part of the Administrative Review. Appx. 5a–6a.

On June 17, 2019, and more than 180 days after the liquidation of A362’s entries, Commerce issued Amended Final Results resulting from its completed administrative review of the CVD Order for the Period of Review. See *Countervailing Duty Order on*

Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2016, 84 FR 28011 (June 17, 2019) (the “Amended Final Results”); *see also* Appx. 133a. As a result of the determinations made by Commerce in the Amended Final Results, Dongying Zhongyi was assigned a lower CVD rate of 15.56% for the Period of Review (as opposed to the CVD rate of 30.61% that was assessed and paid by A362 at the time of entry). The practical effect of the Amended Final Results was that A362 was entitled to a refund of the difference in CVD rates from the paid-in rate of 30.61% to the amended rate of 15.56%. To date, that significant refund has never been made.

Following the determination of the Amended Final Results, Commerce issued Message No. 9184301 to CBP on July 3, 2019. This Message gave CBP instruction and authority – for the first time – to issue refunds resulting from the downward adjustment of the CVD rate established in the Amended Final Results. Specifically, Message No. 9184301 instructed CBP to assess CVD liability, in relevant part, to Dongying Zhongyi at the rate of 15.56% for entries made during the Period of Review. Appx. 31a. CBP was instructed to adjust the entries during the Period of Review and, if the CVD rate had already been paid by the importer, issue refunds of the difference in CVD rates from the original 30.61% rate to the amended rate of 15.56%.¹ *Id.*

¹ Message No. 9184301 also required that the assessment of CVD on shipments or entries of merchandise affected by the Amended Final Results was subject to the provisions of Section

Following publication of the Amended Final Results and the issuance of Message No. 9184301, CBP was required by statute and by the Message to automatically issue A362 a refund for the difference between the 30.61% CVD rate paid by A362 at the time of import and the lower 15.56% CVD rate ultimately assessed by the Amended Final Results. A362 was not required to take any action to receive the refunds and years of accrued interest – it was to happen within CBP’s system automatically.

Despite receiving a specific mandate and detailed instructions from Commerce, CBP never issued the mandated refund required by law. As a result, A362 filed protests on December 12, 2019 and December 13, 2019 indicating A362’s entitlement to refunds for the difference between the 30.61% CVD rate paid by A362 at the time of import and the lower 15.56% CVD rate ultimately assessed by the Amended Final Results (the “Protests”). Appx. 31a. Importantly, the publication of the Amended Final Results on June 17, 2019 was the first notice A362 had that it was entitled to a lower CVD rate on the 2016 entries at issue, and, out of an abundance of caution, A362 filed its protests within 180 days of this first notice date. Despite the undeniable fact that A362 filed within 180 days of the issuance of the Amended Final Results, CBP denied A362’s Protests, claiming they were untimely because they were not filed on or before May 2019 (i.e., within 180 days of the late-2018

778 of the Tariff Act of 1930, as amended. For its part, Section 778 specifically requires that CBP pay interest on overpayments of the required amounts deposited as estimated CVD. The rate at which such interest is payable is the rate in effect under section 6621 of the Internal Revenue Code of 1954 for such period.

liquidation of the entries). Appx. 6a. Notice of the denial of the Protests was emailed by CBP to A362 on April 24, 2020.

Effectively what CBP's denial required was that A362 somehow divine in May 2019 that a rate adjustment would be made in June 2019 and file a protest *before* the issuance of the Amended Final Results in order for the protests to be timely. Not only was this an impossible standard to meet, but the implementation of this requirement both ignores and writes out of existence the separate statutory mechanism for timeliness established by 19 U.S.C. § 1514(c)(3)(B) and 19 C.F.R. § 174.12(e)(2).

A summary timeline of the operative dates in this chronology is as follows:

- August 10, 2015: Commerce issues the CVD Order establishing a 30.61% duty rate.
- 2016: A362's payment of CVD at 30.61% duty rate upon entry of imports into the United States.
- October 16, 2017: Administrative review of the CVD Order begins.
- October-November 2018: A362's entries are liquidated.
- May 8, 2019: 180 days elapses after A362's entries are liquidated.

- June 17, 2019: Issuance of the Amended Final Results, amending CVD rates to 15.56%.
- July 3, 2019: Issuance of Message No. 9184301, instructing issuance of refunds.
- December 12-13, 2019: A362's Protests are filed with CBP.
- April 24, 2020: CBP denies A362's Protests.

I. PROCEEDINGS BEFORE THE COURT OF INTERNATIONAL TRADE

A362 timely commenced its action against the United States (“Defendant”) to dispute CBP’s denial of A362’s Protests before the Court of International Trade (“CIT”) on October 15, 2020.² In its Complaint to the CIT, A362 asserted that the CIT had jurisdiction under 28 U.S.C. § 1581(a). Appx. 32a. In response, Defendant claimed the CIT lacked subject matter jurisdiction under 28 U.S.C. § 1581(a) and sought to dismiss A362’s action as a matter of law. *Id.*

On April 21, 2021, the CIT issued an Opinion granting Defendant’s motion to dismiss A362’s Complaint. Appx. 28a. In its Opinion, the CIT indicated that “[a]s both sides acknowledge the jurisdiction-robbing 180-day deadline to file a valid protest [pursuant to 28 U.S.C. § 1581(a) and 19 U.S.C. § 1514(a)], the dispute here is over when that 180-day time period begins.” Appx. 35a. Ultimately, the CIT

² This filing was timely pursuant to 28 U.S.C. § 2632 and 19 C.F.R. § 174.3, because it occurred within 180 days after the date of mailing of notice of the Protests’ denials.

granted Defendant's motion and determined the CIT lacked subject matter jurisdiction under 28 U.S.C. § 1581(a) to hear A362's action, because the CIT believed that nothing that occurred after May 2019 restarted the 180-day deadline given that "determinations of countervailing and antidumping duty rates are not Customs decisions but rather Commerce decisions." Appx. 37a, citing *Mitsubishi Elecs. Am., Inc. v. United States*, 44 F.3d 973, 977 (Fed. Cir. 1994).

In its Order dismissing A362's action, the CIT concluded that A362's dispute was a "dispute [regarding] a determination made by Commerce" (Appx. 39a) and that jurisdiction, if it ever existed, should have been alleged under 28 U.S.C. § 1581(c) "to challenge Commerce's imposition of countervailing duties or its determination of a countervailing duty rate..." Appx. 38a.

However, the CIT's conclusion in this regard not only improperly misconstrued the very nature of A362's claim, which took no issue with any rate determination or imposition of duties by Commerce, but also failed to take into account (or even address) the plain language of 19 C.F.R. § 174.12(e), which allows for a protest to a "decision, involving neither liquidation nor reliquidation..."

A week after the CIT's Order dismissing A362's action, CBP issued a decision on another protest submitted by A362 (Protest No. 160120103706) (the "New Protest"). For the entry subject to the New Protest, and because that entry was also subject to the CVD Order, A362 paid a CVD rate of 30.61% at the time of import, just as it had for all the entries that

were the subject of A362's prior Protests and CIT action. In the New Protest, like the Protests at issue before the CIT, A362 protested CBP's failure to refund the difference in CVD rates for Zhongyi-imported tires during the Period of Review. However, unlike the response to the other Protests filed by A362, CBP now agreed with A362's position in the New Protest that the entries A362 imported from Zhongyi should be assessed a rate of 15.53%. Appx. 24a–25a. As a result, CBP issued A362 a refund with all applicable interest in regard to the entry that was the subject of the New Protest. Appx. 25a. This action taken by CBP was directly contrary to the action taken by CBP in regard to the other Protests, and the decision by CBP granting the New Protest arrived after the CIT's dismissal of A362's action.

As a result of the new evidence A362 acquired when the New Protest was granted, A362 requested the CIT reconsider its April 21, 2021 Order. Appx. 22a. In its request for reconsideration, A362 highlighted the fact that the CIT's April Order applied the wrong statutory deadline provision, failed to consider the plain language of 19 C.F.R. § 174.12(e), and set forth that the CBP's decision issued in regard to the New Protest was newly-discovered evidence that CBP was acting in an unjust, arbitrary, and capricious manner that would now provide the CIT an alternative mechanism of jurisdiction under 28 U.S.C. § 1581(i)(1)(D). Appx. 24a, 26a. A362 argued that CBP's decision in regard to the New Protest could be understood as CBP determining that a protest made within 180 days of the Message No. 9184301 (implementing the Amended Final Results) was not untimely and, if that is the case, then the

decision CBP issued in regard to the New Protest was directly at odds with its decision in regard to the underlying Protests at issue in A362's Complaint. Appx. 24a–26a.

Defendant opposed A362's motion for reconsideration by urging the CIT to set aside any consideration of the newly discovered evidence and by asserting that CBP's action in handling the New Protest was of no consequence to the fact that the Protests were not filed within 180 days of the date of their liquidation. Appx. 25a Defendant went on to argue that the CIT also lacked jurisdiction under 28 U.S.C. § 1581(i) because the CIT's residual jurisdiction could not be invoked given that A362 did not have manifestly inadequate remedies under the other provisions of § 1581. *Id.*

On September 20, 2021, the CIT denied A362's motion for reconsideration and leave to amend the Complaint as futile. Appx. 17a. Despite the fact that CBP did not state in its decision on the New Protest the reason that CBP agreed to grant A362's requested relief, the CIT: held that the New Protest was both timely and valid under 19 U.S.C. § 1514(c)(3)(A) and 19 C.F.R. § 174.12(e)(1); continued to hold that the original Protests were not timely under 19 U.S.C. § 1514(c)(3)(A) and 19 C.F.R. § 174.12(e)(1); and, because the New Protest was not similarly situated to the original Protests, the New Protest did not provide a sufficient basis to establish CIT jurisdiction over the original Protests at issue in A362's Complaint. Appx. 26a.

II. PROCEEDINGS BEFORE THE FEDERAL CIRCUIT COURT OF APPEALS

A362 timely appealed to the Federal Circuit Court of Appeals (the “Federal Circuit”).³ On appeal, A362 argued that, until the publication of the Amended Final Results, it had nothing to protest, and as such, its protests were timely. *See* 19 U.S.C. § 1514(c)(3); 19 C.F.R. § 174.12(e).

A362 also argued that, if jurisdiction was not available under § 1581(a), then residual jurisdiction under § 1581(i) had to exist, because without that exercise of residual jurisdiction, A362 would be without *any* available legal remedy in cases where CVD rates are altered 180 days after liquidation, unless they filed premature, legally ineffective claims for refunds that do not exist and cannot be paid.

During oral arguments before the Federal Circuit, much like A362, the justices struggled to understand the impacts of the various CVD orders, suspension of liquidations and administrative reviews. Importantly, it was unclear whether A362’s entries were subject to any order suspending liquidation at the time the entries subject to the Protests were, in fact, liquidated. The Federal Circuit requested supplemental briefing to address the lack of clarity on a

³ The Federal Circuit had jurisdiction to hear A362’s appeal pursuant to 28 U.S.C. § 1295(a)(5) as an appeal from a final decision of the CIT that disposed of all parties’ claims. The appeal filed by A362 was timely under 28 U.S.C. § 2645(c) and Federal Rules of Appellate Procedure 4(a)(1) and 4(a)(4), because A362 filed its notice of appeal to the Federal Circuit on November 11, 2021, within sixty days of the CIT’s final judgment issued on September 20, 2021.

number of issues, including the existence of a suspension order applicable to A362's entries, if any existed. Appx. 7a.

Following supplemental briefing, the Federal Circuit Court rejected A362's position and affirmed the CIT's decision. In its ruling, the Federal Circuit chastised Commerce for its lack of clarity with respect to "the provisions governing suspension of liquidation in the countervailing duty context in general, and in this case in particular." Appx. 9a. It noted Commerce's failure to cite or discuss relevant messages directly related to the suspension and liquidation of the certain entries. *Id.* The Federal Circuit instructed Commerce to be more specific and complete in the future. *Id.*

Turning to the merits, the Federal Circuit held that A362 could have asserted jurisdiction by timely protesting the liquidations of these entries under 19 U.S.C. § 1514, on the theory that Customs had improperly liquidated A362's entries given that the manufacturer of A362's goods was participating, at least under one name, in an administrative review that should have suspended any liquidation of the entries until after completion of the administrative review. Appx. 15a. The Federal Circuit further found that because A362 could have filed a protest under § 1514(a)(5) to protest the fact that liquidation occurred, it had a basis to file a protest prior to the rate change in June 2019 without those protests being improperly premature. *Id.* Further, the Federal Circuit held that A362 was not entitled to residual CIT jurisdiction under 28 U.S.C. § 1581(i),

which exists only when an alternative jurisdictional mechanism under § 1581 is not available. Appx. 16a.

III. REASONS FOR GRANTING THE WRIT

The questions presented in this case are of critical importance to the customs and import industry. The regulations governing customs and the duties associated with the importation of goods are often, at best, unclear. The Federal Circuit's ruling further compounds the lack of clarity by essentially eliminating one of the established statutory methods by which importers can submit a valid and timely protest if necessary.

This Court should review and correct the Federal Circuit's incorrect interpretation of the statutes as they relate to CIT's jurisdiction to review certain protests.

A. The Decision Below Eliminates One Of The Statutory Mechanisms Under Which Importers Can File Protests.

Both the Federal Circuit and the CIT erred in their statutory interpretations when they determined that the CIT lacked subject matter jurisdiction under 28 U.S.C. § 1581(a) solely because more than 180 days passed from the date of liquidation of A362's entries. This analysis fails to acknowledge the alternative statutory structure A362 sought to utilize and that is – and should remain – available to all importers.

There are two distinct mechanisms for calculating when a duty protest is timely. Not only is there the traditional 180 days following liquidation (established by 19 U.S.C. § 1514(c)(3)(A) and 19 C.F.R. § 174.12(e)(1)), there is another calculation allowed under 19 U.S.C. § 1514(c)(3)(B) and 19 C.F.R. § 174.12(e)(2) that confirms that a protest is also timely when it is made within 180 days of another decision that is not a decision involving either liquidation or reliquidation. *See* 19 U.S.C. § 1514(c)(3); 19 C.F.R. § 174.12(e). Appx. 44a, 56a–57a.

19 U.S.C. § 1514(c)(3) specifically provides:

- (3) A protest of a decision, order, or finding described in subsection (a) shall be filed with the Customs Service within 180 days after but not before—
- (A) date of liquidation or reliquidation, ***or***
- (B) in circumstances where subparagraph (A) is inapplicable, ***the date of the decision as to which protest is made.***

19 U.S.C. § 1514(c)(3) (emphasis supplied). Appx. 44a. In turn, 19 C.F.R. § 174.12(e) allows protests to be made:

within 180 days of a decision relating to an entry made on or after December 18, 2004, after any of the following... (1) The date of notice of liquidation or reliquidation,

or the date of liquidation or
 reliquidation, as
 determined under §§159.9
 or 159.10 of this chapter; **or**
 (2) ***The date of the deci-
 sion, involving neither a
 liquidation nor
 reliquidation, as to
 which the protest is
 made....***

19 C.F.R. § 174.12(e) (emphasis supplied). Appx. 56a–57a.

Simply put, Congress provided a variety of jurisdictional avenues for importers to lodge protests related to errors or omissions by CBP, and the lower courts’ decisions in this case collapse two options into one by eliminating the ability to pursue a protest based on the date of a decision “involving neither a liquidation nor reliquidation” by instead forcing an importer into protesting solely based on the date of liquidation. If allowed to stand, the Federal Circuit’s interpretation causes disruption of the proper implementation of customs regulations.

In this case, there was nothing for A362 to protest regarding the assessed duty rate as of the date of liquidation. When A362’s entries were liquidated in 2018, the 30.61% CVD rate A362 had paid upon entry of the merchandise in 2016 was still the rate that remained in place, and that rate continued in place throughout the duration of the 180-day period following liquidation. The 180-day period following the 2018 liquidation expired in May 2019. There was no erroneous rate assessment for A362 to protest at this time. It was not until a month later, in June 2019,

that the Amended Final Results were issued and the CVD rate was cut in half. *See* 84 FR 28011 (June 17, 2019).

It was with the knowledge that A362 could not file a valid protest under 19 U.S.C. § 1514(c)(3)(A) and 19 C.F.R. § 174.12(e)(1) that A362 acted with diligence and correctly filed its protest in accordance with 19 U.S.C. § 1514(c)(3)(B) and 19 C.F.R. § 174.12(e)(2) within 180 days of the issuance of the Amended Final Results once CBP decided to refuse implementation of the requisite refund that A362 was owed.

In its analysis, the Federal Circuit ruled that A362's argument for application of the CIT review jurisdiction established by 19 U.S.C. § 1514(c)(3)(B) and 19 C.F.R. § 174.12(e)(2) worked only if dates of liquidation were "inapplicable" and that:

The date of liquidation is the applicable date under § 1514(c)(3) for filing a protest to the rate or amount of those duties. There is no other "date of the decision as to which protest is made." § 1514(c)(3)(B). Accordingly, a claim for a refund to duties assessed at liquidation must be filed within 180 days of liquidation, pursuant to § 1514(c)(3)(A).

Appx. 14a. However, this is exactly a situation where the date of liquidation was inapplicable as contemplated by 19 U.S.C. § 1514(c)(3). The date of

liquidation was simply not relevant, and, even if it was, the alternative statutory mechanism for jurisdiction under 19 U.S.C. § 1514(c)(3)(B) and 19 C.F.R. § 174.12(e)(2) is not dependent on the lack of availability of another jurisdictional avenue. This is where the Federal Circuit erred; even if A362 could have protested the fact of liquidation, it did not have to, because it had another statutory mechanism for protest available once CBP failed to issue the later-mandated refund. It was the issuance of the Amended Final Results amending CVD rates to 15.56% and the issuance of Message No. 9184301 instructing issuance of refunds that were the relevant events for purposes of calculating when the jurisdictional deadline began to run under 19 U.S.C. § 1514(c)(3)(B) and 19 C.F.R. § 174.12(e)(2). By instead forcing A362's claim into 19 U.S.C. § 1514(c)(3)(A), the lower courts have robbed A362 of its rightful remedy under 19 U.S.C. § 1514(c)(3)(B) and either collapsed two distinct statutory avenues for jurisdiction into one or made 19 U.S.C. § 1514(c)(3)(B) and 19 C.F.R. § 174.12(e)(2) dependent on the unavailability of jurisdiction under the 19 U.S.C. § 1514(c)(3)(A) and 19 C.F.R. § 174.12(e)(1), which is not what the plain language of the statutes provides. This Court's review is critical to maintaining the distinct statutory mechanisms allowed to importers to protest errors by CBP, such as its failures in this case.

B. The Decision Below Encourages Premature, Incomplete, Sham Protest Filings.

The Federal Circuit's ruling put importers in a situation where they are now encouraged, perhaps even

required, to file premature, incomplete and sham protests in situations where duty rates change after liquidation.

Had A362 filed a protest prior to the issuance of the Amended Final Results in June 2019, as suggested by the lower courts, A362 would have lacked standing, as its claim for relief through adjustment of the assigned duty rate would have been patently premature when CBP had no authorization to issue any refund prior to the issuance of Message 9184301. Well-established case law confirms that premature, overly broad, or indefinite protests do not constitute a proper basis for invoking CIT jurisdiction. *See, e.g., Iowa, Ltd. v. United States*, 5 C.I.T. 81, 86, 561 F.Supp. 441, 445 (1983), *aff'd* 724 F.2d 121 (Fed. Cir. 1984) (holding that a premature protest “may not serve as a basis for invoking this court’s jurisdiction under 28 U.S.C. §1581(a)”); *United States v. E.H. Bailey & Co.*, 32 C.C.P.A. 89, 98 (1944) (ruling that “[a] protest is not sufficient ... which alleges merely that the amount of duties assessed by the collector is erroneous,” because “[s]uch a blanket form, if sufficient, could be used in every case”).

The Federal Circuit’s suggested resolution by filing a protest under § 1514(a)(5) does not resolve the issue. If, as the Federal Circuit’s decision suggests, all protests have to be lodged within 180 days of liquidation, not only would that requirement invalidate explicit portions of the governing statutes that provide for alternative avenues of relief separate and apart from liquidation protests (*supra* §III(A)), it would, in practical effect, require every recipient of a

potential refund to have to file a protest based solely on the *possibility* that CBP may not act in compliance with directives. This means that each time Commerce conducts an annual duty review, any importer that has an entry liquidated that *might* be subject to a lower rate at some unknown future date would have to file a protest before the new rate (if any exists) is determined in order to preserve its rights. In practice, these requirements would result in a significant surge of protests that is not in line with how the system, when properly construed under the statutory mechanisms, is intended to function.

What makes more sense, and what was contemplated by Commerce and the statutory mechanisms, is that when an importer learns that a different CVD rate applies to its entries, it can generally expect CBP to issue refunds on overpayments as required by law. If CBP does not comply with the law, the importer can file a protest under 19 U.S.C. § 1514(c)(3)(B) within 180 days of CBP's receipt of its instructions from Commerce to issue the required refunds.

Further, and also contrary to the Federal Circuit's holding, this case does not fall squarely within the *Carbon Activated Corp. v. United States* precedent. See *Carbon Activated Corp. v. United States*, 791 F.3d 1312 (Fed. Cir. 2015). Appx. 12a. In *Carbon Activated*, the importer had a basis to protest the liquidation of the entries, because that liquidation occurred in direct contravention to a Commerce directive. See 791 F.3d at 1315 (holding that “[i]f, however, Customs disregards Commerce’s suspension instructions and liquidates the entries, an

importer may protest the liquidation pursuant to 19 U.S.C. § 1514”). Here, CBP’s liquidation of A362’s entries were not in direct contravention to a Commerce directive. There was no wrongful liquidation to protest because Zhongyi had withdrawn its name from the administrative review, making its entries potentially subject to liquidation. Instead, the first protestable action by CBP arose when CBP failed to issue the required refunds resulting from the adjustment of the CVD rate established in the Amended Final Results.

This Court should grant review to prevent the inefficient and illogical results of the ruling below.

CONCLUSION

As set forth above, this Court's review is necessary to correct faulty statutory interpretation and a misapplication of customs regulations that would result in the collapse of established statutory rights and the influx of premature and legally-ineffective protests to CBP. Accordingly, Petitioner respectfully requests that a writ of certiorari be issued.

Respectfully Submitted,

Heather L. Marx

Counsel of Record

Thomas Wallrich

Cassandra Jacobsen

COZEN O'CONNOR

33 South Sixth Street

Suite 3800

Minneapolis, MN 55402

hmarx@cozen.com

(612) 260-9004

Counsel for Petitioner

Acquisition 362, LLC dba

Strategic Import Supply

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, FILED FEBRUARY 6, 2023.....	1a
APPENDIX B — OPINION AND ORDER OF THE UNITED STATES COURT OF INTERNATIONAL TRADE, FILED SEPTEMBER 20, 2021	17a
APPENDIX C — OPINION OF THE UNITED STATES COURT OF INTERNATIONAL TRADE, FILED APRIL 21, 2021	28a
APPENDIX D — STATUTES AND REGULATIONS.....	40a
19 USC § 1514	40a
19 CFR § 174.12(e).....	55a
19 CFR § 174.13.....	58a
28 U.S.C. § 1581.....	50a
80 FR 47902.....	61a
82 FR 48051.....	94a
84 FR 28011	133a

1a

**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT, FILED FEBRUARY 6, 2023**

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2022-1161

ACQUISITION 362, LLC, DBA STRATEGIC
IMPORT SUPPLY,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from the United States Court of
International Trade in No. 1:20-cv-03762-SAV
Judge Stephen A. Vaden.

February 6, 2023, Decided

Before DYK, TARANTO, and HUGHES, *Circuit Judges.*

DYK, *Circuit Judge.*

Acquisition 362, LLC dba Strategic Import Supply
("Acquisition") appeals a decision of the United States
Court of International Trade ("CIT") dismissing

Appendix A

Acquisition's complaint concerning protests to decisions of the U.S. Customs and Border Protection ("Customs") as to certain entries of passenger vehicle and light truck tires. We conclude that the CIT lacked subject matter jurisdiction. Acquisition could have asserted jurisdiction by timely protesting the liquidations of these entries under 19 U.S.C. § 1514, on the theory that Customs had improperly liquidated them because the manufacturer of Acquisition's goods was participating in an administrative review. Because Acquisition did not timely protest the liquidations, the CIT lacked jurisdiction under both 28 U.S.C. § 1581(a) and (i). We affirm.

BACKGROUND

In 2016, Acquisition imported several entries of passenger vehicle and light truck tires from the People's Republic of China manufactured by Shandong Zhongyi Rubber Co., Ltd. ("Shandong Zhongyi"). Because importation of tires manufactured by Shandong Zhongyi was subject to a 2015 countervailing duty order ("*CVD Order*") from the Department of Commerce ("Commerce"),¹ Acquisition deposited estimated

1. See *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 Fed. Reg. 47902, 47907 (Aug. 10, 2015) ("*CVD Order*"). The 2015 *CVD Order* specifically directed Customs to suspend liquidation of entries covered by the order. *Id.*; see also Gov't's Suppl. Br. Ex. A, Message No. 5226310 (Aug. 14, 2015).

Appendix A

countervailing duties for the entries at a rate of 30.61%, the “all-others” rate established in the *CVD Order*. As discussed in detail below, normally, if an administrative review were instituted, liquidation of such entries (the final assessment of the duties owed) would continue to be suspended until Commerce in the administrative review retroactively determined the final countervailing duty rate for the relevant entries imported during the period.

At the request of various interested parties, including Shandong Zhongyi, Commerce initiated an administrative review of the *CVD Order* covering entries imported during the period of review from January 1, 2016, through December 31, 2016 (“Annual Review”). That period covered all of the entries at issue here.² Upon initiation of the Annual Review, Commerce instructed Customs to continue suspending liquidation of entries subject to the review but to liquidate entries not subject to the review at the estimated deposit rate.³ Liquidation of Acquisition’s entries was initially suspended because Shandong Zhongyi-manufactured products were subject to the Annual Review.

However, before the Annual Review was completed, Shandong Zhongyi withdrew from the review.⁴ Accordingly,

2. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 Fed. Reg. 48051, 48058 (Oct. 16, 2017) (“*Initiation Notice*”).

3. See Gov’t’s Suppl. Br. Ex. B, Message No. 7305313 (Nov. 1, 2017), at ¶¶ 2-3.

4. See *Certain Passenger Vehicle and Light Truck Tires From the People’s Republic of China: Preliminary Results of*

Appendix A

Commerce ordered Customs to liquidate Shandong Zhongyi-manufactured entries imported in 2016, because Commerce concluded that those entries were no longer covered by the Annual Review and would not be entitled to a countervailing duty rate different from the estimated deposit rate.⁵ The entries at issue in this appeal were liquidated according to Commerce's instructions in October and November of 2018, with final countervailing duties assessed at the 30.61% deposit rate. Importers that wish to challenge the liquidation of their entries can do so by filing a protest within 180 days of the liquidation. 19 U.S.C. § 1514(a)(5), (c)(3)(A). Acquisition did not protest the liquidation of these entries within 180 days.

Ultimately, in 2019, Commerce adopted final results of the Annual Review ("*Amended Final Results*"), setting the final countervailing duty rates for the 2016 entries of the companies under review.⁶ The *Amended Final*

Countervailing Duty Administrative Review and Rescission, in Part, 83 Fed. Reg. 45611, 45612 (Sept. 10, 2018) ("*Withdrawal Notice*").

5. See Gov't's Suppl. Br. Ex. C, Message No. 8269302 (Sept. 26, 2018), at ¶ 1.

6. See *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2016*, 84 Fed. Reg. 28011 (June 17, 2019) ("*Amended Final Results*"). The *Amended Final Results* corrected a clerical error in the previously published final results of the investigation. See *id.* at 28011 n. 1 (citing *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty*

Appendix A

Results included an individual rate for certain companies as well as a rate of 15.56% for the remaining “non-selected companies under review.”⁷ Commerce instructed Customs to liquidate the entries that had remained suspended during the Annual Review and to assess final countervailing duties pursuant to the rates determined in the *Amended Final Results*.⁸ For purposes of this appeal, we assume that if Acquisition’s entries had remained unliquidated, Acquisition would have been entitled to and would have received the 15.56% rate applicable to entries of other parties under review but not selected for the determination of individual rates.

In December 2019, following the publication of the *Amended Final Results*, Acquisition filed protests to Customs’ failure to refund the difference between the 30.61% rate it had deposited and the 15.56% “non-selected companies under review” rate determined in the *Amended Final Results*. Acquisition argued that the 15.56% rate applied because the manufacturer, Shandong Zhongyi, which withdrew from the Annual Review, is the same company as Dongying Zhongyi Rubber Co., Ltd., which remained in the Annual Review and is named as a company entitled to the “non-selected companies under

Administrative Review; 2016, 84 Fed. Reg. 17382 (April 25, 2019) (“*Final Results*”).

7. See *Amended Final Results*, 84 Fed. Reg. at 28011-12.

8. See Gov’t’s Suppl. Br. Ex. D, Message No. 9184301 (July 3, 2019).

Appendix A

review” rate.⁹ Acquisition urged that its protests were timely because they were brought within 180 days of the *Amended Final Results*.¹⁰ Customs denied the protests as untimely because they were filed more than 180 days after the liquidations of the relevant entries, without deciding whether Shandong Zhongyi and Dongying Zhongyi were the same entity.

Following the denial of its protests, Acquisition brought this action at the CIT challenging the denial of the protests. The CIT dismissed the complaint for lack of subject matter jurisdiction because Acquisition did not file timely protests of the liquidations of the entries pursuant to 19 U.S.C. § 1514. Acquisition then moved for reconsideration and leave to amend its complaint, arguing in the alternative that it should be given leave to amend its complaint to assert jurisdiction under § 1581(i). That provision gives the CIT jurisdiction over claims that could not have been brought under another subsection of § 1581 or for which any remedy under another subsection would be manifestly inadequate. *See Sunpreme Inc. v. United States*, 892 F.3d 1186, 1191 (Fed. Cir. 2018). The CIT denied the motion as futile. This appeal followed.

9. *See Final Results*, 84 Fed. Reg. at 17384.

10. Before the CIT, Acquisition argued its protests were timely because they were brought within 180 days of the message to Customs implementing the *Amended Final Results*. On appeal, Acquisition argues that because the protests were brought within 180 days of the *Amended Final Results*, they would necessarily have been brought within 180 days of any “protestable decision made by [Customs]” after the *Amended Final Results*, without specifying when exactly that decision occurred. Appellant’s Br. 18.

Appendix A

Following oral argument on November 2, 2022, we ordered supplemental briefing to clarify whether the liquidation of Acquisition's entries had been suspended at the time they were liquidated.¹¹ Supplemental briefing

11. The supplemental briefing order directed the government to answer eight questions, and Acquisition to respond to the government's brief. The questions were:

(1) Whether the August 10, 2015, Countervailing Duty (CVD) Order suspended liquidation of imports subject to the administrative review for the period of review from January 1, 2016, to December 31, 2016 (2016 POR).

(2) Whether any other order suspended such liquidation during the administrative review for the 2016 POR. If so, the government shall provide a copy of any such order and indicate whether the order was a public document.

(3) Whether any statutory provision or regulation provides for automatic suspension of liquidation upon the initiation of an administrative review of a CVD order.

(4) Whether the liquidation of plaintiff's entries on October 19, 2018, October 26, 2018, and November 9, 2018, violated any order suspending liquidation.

(5) Whether plaintiff's entries were subject to the administrative review for the 2016 POR.

(6) If liquidation of plaintiff's entries was not suspended during the 2016 POR, whether plaintiff could have sought suspension from some agency, such as Commerce or Customs, having authority to grant it, whether on the ground that a pending administrative review might affect the proper duty

Appendix A

was completed on December 6, 2022. We have jurisdiction under 28 U.S.C. § 1295(a)(5).

DISCUSSION**I**

Before turning to the merits, we note that Commerce's failure in its orders and initial brief to clearly set out

or on any other ground. If so, indicate what statutory provision or regulation provides such authority and when the agency (*e.g.*, Commerce or Customs) would be obligated to grant such a request and when it would have discretion to grant it.

(7) Explain the relationship between Acquisition 362, LLC, Shandong Zhongyi Rubber Co., Ltd., and Dongying Zhongyi Rubber Co., Ltd. Explain the effect and relevance of Shandong Zhongyi Rubber Co., Ltd. withdrawing from the review due to its relationship with Dongying Zhongyi Rubber Co., Ltd. *See* J.A. 3 (“Plaintiff submits [Shandong Zhongyi Rubber Co., Ltd] withdrew its request for review because it was a non-selected company under review under an alternate company name, Dongying Zhongyi Rubber Co., Ltd.”).

(8) Whether Shandong Zhongyi Rubber Co., Ltd. withdrawing its individual request for administrative review affected when and why plaintiff's entries were liquidated.

Suppl. Br. Order, *Acquisition 362, LLC v. United States*, No. 2022-1161, Docket No. 32 (Nov. 8, 2022) (modifications in original) (citation omitted).

Appendix A

the provisions governing suspension of liquidation in the countervailing duty context in general, and in this case in particular, created confusion that necessitated supplemental briefing to resolve questions that should have been straightforward. Commerce's theory is that the 2015 *CVD Order* suspended liquidation of entries after its issuance and that the institution of the Annual Review in the 2017 *Initiation Notice* continued that suspension as to entries within the scope of the review. Thereafter, specific messages to Customs continued the suspension of liquidation during the Annual Review for companies under review, and, in 2018, lifted the suspension with respect to Acquisition's entries following Shandong Zhongyi's withdrawal from the Annual Review. None of this was apparent from Commerce's brief. In its initial brief, Commerce failed to cite or discuss the *Initiation Notice*, *Withdrawal Notice*, or any of the relevant messages instructing Customs to liquidate specific entries and suspend liquidation of others. In the future, we expect Commerce will be both more specific and complete than it was initially about the sequence of government and party actions leading to the challenges presented to the CIT and on appeal.

II

Turning to the merits of the case, we review de novo a dismissal by the CIT for lack of subject matter jurisdiction. *Carbon Activated Corp. v. United States*, 791 F.3d 1312, 1314 (Fed. Cir. 2015).

Appendix A

Countervailing duties are imposed when Commerce determines another country is providing “a countervailable subsidy with respect to the manufacture, production, or export” of merchandise imported into the United States. 19 U.S.C. § 1671(a)(1). When merchandise is subject to a countervailing duty order, the liability to pay countervailing duties accrues upon entry into the United States, but the actual amount of liability is determined later:

[T]he United States uses a “retrospective” assessment system under which final liability for anti-dumping and countervailing duties is determined after merchandise is imported. Generally, the amount of duties to be assessed is determined in a review of the order covering a discrete period of time. If a review is not requested, duties are assessed at the rate established in the completed review covering the most recent prior period or, if no review has been completed, the cash deposit rate applicable at the time merchandise was entered.

19 C.F.R. § 351.212(a). The “final computation or ascertainment of duties,” including countervailing duties, on entries of such merchandise is known as the “liquidation” of those entries. *Id.* § 159.1; *see also* 19 U.S.C. § 1500(d). To facilitate this retrospective assessment system, a countervailing duty order (here, the 2015 *CVD Order*) suspends the liquidation of entries covered by the order until such time as the final countervailing duty rate is determined. *See* 19 U.S.C. § 1671d(c).

Appendix A

At least once a year, if an interested party requests it, Commerce is required to review the countervailing duty order for a given retrospective period (known as an administrative review, periodic review, or annual review). *See* 19 U.S.C. § 1675(a)(1); 19 C.F.R. § 351.213(e)(2). Pursuant to its regulations, Commerce only reviews the countervailing duty rate for merchandise “covered by the request.” 19 C.F.R. § 351.212(c)(2). If a review is not timely requested, Commerce “without additional notice” will instruct Customs to liquidate entries at the cash deposit rate collected at the time of entry. *Id.* § 351.212(c)(1), (c)(2). For merchandise covered by a request for review, Commerce will continue suspending liquidation until the final countervailing duty rate is determined in the review. *See Ambassador Div. of Florsheim Shoe v. United States*, 748 F.2d 1560, 1565 (Fed. Cir. 1984).

Upon the publication of the final results of an administrative review, Commerce will lift the suspension of liquidation for the entries covered by the review and instruct Customs to liquidate those entries at the countervailing duty rate determined in the review. *See* 19 U.S.C. § 1675(a)(1); 19 C.F.R. § 351.212(b)(2). An importer will have to pay any shortfall if the final countervailing duty rate is determined to be higher than the cash deposit rate and will be entitled to a refund if the final rate is lower than the cash deposit rate. *See* 19 C.F.R. § 351.212(e). If the final rate is the same as the cash deposit rate, no further payments are required upon liquidation, and the cash deposit becomes the final countervailing duty.

Suspending liquidation pending the determination of the final countervailing duties that ultimately will be

Appendix A

assessed is essential to the operation of the retrospective countervailing duty system, because liquidation is the “final computation or ascertainment of duties.” 19 C.F.R. § 159.1; *see Ambassador Div. of Florsheim Shoe*, 748 F.2d at 1562. Parties have a limited window of 180 days to protest a liquidation. 19 U.S.C. § 1514(a)(5), (c)(3)(A). We have explained: “[A]ll liquidations, whether legal or not, are subject to the timely protest requirement. Without a timely protest, all liquidations become final and conclusive under 19 U.S.C. § 1514.” *Juice Farms, Inc. v. United States*, 68 F.3d 1344, 1346 (Fed. Cir. 1995) (citation omitted). Suspending liquidation until an administrative review concludes gives Commerce and future tribunals the benefit of applying the post-review, final countervailing duty rate when entries are ultimately liquidated.

When entries are improperly liquidated, an importer has a remedy—to protest the liquidation under § 1514. In *Carbon Activated Corp.*, the appellant-importer discovered after the 180-day protest window had expired that its entries had been erroneously liquidated in contravention of a suspension order. 791 F.3d at 1314. We held that the importer could have earlier determined that the entries had been liquidated and “could have pursued a remedy under § 1514 by protesting those erroneous liquidations.” *Id.* at 1316. Accordingly, although the entries would have been entitled to a later-determined duty rate lower than the one at which they were liquidated, we concluded that the importer could have asserted CIT jurisdiction under 28 U.S.C. § 1581(a) by timely protesting the premature liquidations under § 1514, and that it had no further remedy. *Id.* at 1316-17.

*Appendix A***III**

Though Acquisition alleges that its goods were manufactured by Shandong Zhongyi, which withdrew from the Annual Review, it argues it was entitled to the “non-selected company under review” rate in the *Amended Final Results*. That is so, it argues, because Shandong Zhongyi is in fact identical to Dongying Zhongyi, which did not withdraw from the Annual Review and was determined to be entitled to that rate. Under these circumstances, Acquisition urges that it had no basis to protest until after the *Amended Final Results* were published, more than 180 days after the liquidations.

Acquisition contends that the CIT had jurisdiction over this refund suit. Acquisition’s theory is untenable. First, no statute or regulation has been called to our attention that authorizes or requires a refund of duties where they have been finally determined by liquidation, and the statute is quite clear that liquidation of an entry finally establishes the duties unless a protest to the liquidation is filed. *See* § 1514(a); *see also* 19 C.F.R. § 159.1. The only way Acquisition can obtain CIT jurisdiction under § 1581(a) over a claim for a refund is if it can bring itself within one of the provisions of § 1514(a).

Second, in an attempt to demonstrate that its protests fell under § 1514(a)(2), as protests to the “rate and amount of duties chargeable,”¹² and were timely, Acquisition

12. As relevant here, § 1514(a) provides that: “[D]ecisions of the Customs Service . . . as to— . . . (2) the classification and

Appendix A

contends that it is not protesting the liquidations themselves and could not have done so. Instead, according to Acquisition, this is a “circumstance[] where [the dates of liquidation are] inapplicable,” § 1514(c)(3)(B),¹³ and the 180-day deadline for filing protests was triggered by Customs’ decision to deny Acquisition’s refund request, not by the liquidations themselves. *See also* 19 C.F.R. § 174.12(e).

This is not so. In general, duties are finally determined by liquidation. The date of liquidation is the applicable date under § 1514(c)(3) for filing a protest to the rate or amount of those duties. There is no other “date of the decision as to which protest is made.” § 1514(c)(3)(B). Accordingly, a claim for a refund to duties assessed at liquidation must be filed within 180 days of liquidation, pursuant to § 1514(c)(3)(A).

Acquisition’s theory can only work if the dates of liquidation are “inapplicable,” that is, if Acquisition

rate and amount of duties chargeable; [or] . . . (5) the liquidation or reliquidation of an entry . . . ; shall be final and conclusive . . . unless a protest is filed”

13. Section 1514(c)(3) provides that:

A protest of a decision, order, or finding described in subsection (a) shall be filed with the Customs Service within 180 days after but not before—

(A) date of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

Appendix A

could not timely challenge the liquidations. Acquisition's contention that until the results of the Annual Review were published it was without a remedy to challenge the liquidation of its entries is not correct. If entries are improperly liquidated, importers can challenge the legality of the liquidations by timely filing a protest to the liquidation under § 1514(a)(5) even if the duty on the entries has not yet been finally determined. This was the exact situation in *Carbon Activated Corp.*, 791 F.3d at 1316. A protest to the premature liquidation of the entries would not have been either "a sham" or "premature." Appellant's Br. 14. The protest would not have been to the refusal to grant a refund, but to the premature liquidation of the entries.

To be sure, the nominal manufacturer of Acquisition's entries was no longer a party to the Annual Review. But in Acquisition's view, that same entity was still a party to the review under a different name. Under this theory, the suspension of liquidation of Acquisition's entries should have continued. Acquisition could thus have protested the liquidation as having been improper. If it is true, as Acquisition contends, that it was entitled to the countervailing duty rate assigned to Dongying Zhongyi because Dongying Zhongyi was the manufacturer of Acquisition's imports and a party to the Annual Review, Acquisition would have been equally entitled to the suspension of liquidation of Dongying Zhongyi-manufactured entries during the pendency of the Annual Review. Since Acquisition had a remedy to challenge the liquidations of its entries within 180 days, the statutory language it cites in an attempt to establish a different

Appendix A

timeframe is inapplicable. Acquisition's protests were untimely, and the CIT lacked jurisdiction under § 1581(a).

IV

In its motion for reconsideration, Acquisition sought leave to amend its complaint to assert jurisdiction under the residual jurisdictional provision, 28 U.S.C. § 1581(i). Jurisdiction under § 1581(i) is appropriate only if there is no jurisdiction under another subsection of § 1581, or if the remedy under another subsection “would be manifestly inadequate.” *ARP Materials, Inc. v. United States*, 47 F.4th 1370, 1377 (Fed. Cir. 2022) (citation omitted). Because Acquisition could have obtained an adequate remedy under § 1581(a) by timely filing a protest of the allegedly premature liquidations, it cannot resort to § 1581(i). Accordingly, the proposed amendment to the complaint would be futile.¹⁴

CONCLUSION

Acquisition could have asserted jurisdiction under 28 U.S.C. § 1581(a) by filing timely protests of the liquidation of its entries. Because its protests were untimely, the CIT correctly dismissed for lack of jurisdiction.

AFFIRMED

14. In its reconsideration motion, Acquisition cited another protest that Customs had granted in part for an entry of Shandong Zhongyi-manufactured goods, applying a countervailing duty rate of 15.53%. *See* J.A. 74-75, 95. But that protest was timely because it was filed within 180 days of the liquidation of the entry, unlike the protests at issue in this appeal.

17a

**APPENDIX B — OPINION AND ORDER OF THE
UNITED STATES COURT OF INTERNATIONAL
TRADE, FILED SEPTEMBER 20, 2021**

UNITED STATES COURT OF
INTERNATIONAL TRADE

Court No. 1:20-cv-03762

ACQUISITION 362, LLC DBA
STRATEGIC IMPORT SUPPLY,

Plaintiff,

v.

UNITED STATES,

Defendant.

September 20, 2021, Decided

Before: Stephen Alexander Vaden, Judge.

[Denying Plaintiff's Motion for Reconsideration and Leave
to Amend Its Complaint.]

Dated September 20, 2021

OPINION AND ORDER

Vaden, Judge: On May 19, 2021, Plaintiff Acquisition
362, LLC, doing business as Strategic Import Supply, filed

Appendix B

a motion under USCIT Rule 59(a)(1)(B) for reconsideration of the Court's April 21, 2021 decision and the accompanying judgment that dismissed Plaintiff's case for lack of subject matter jurisdiction. *See Acquisition 362, LLC v. United States*, 517 F.Supp.3d 1318, SLIP OP. (Ct. Int'l Trade 2021) (*Acquisition 362 I*). In that decision, the Court found that the precondition for the Court's 28 U.S.C. § 1581(a) jurisdiction, a valid protest under 19 U.S.C. § 1514, was absent; and the Court therefore lacked subject matter jurisdiction. In its Motion for Reconsideration, Plaintiff cites newly discovered evidence that it argues merits reconsideration of the Court's order dismissing its action. *See* Pl.'s Mot. for Recons. (Pl.'s Mot.) at 4, ECF No. 31. Plaintiff also seeks leave of the Court to amend its complaint to assert jurisdiction under 28 U.S.C. § 1581(i).¹ Pl.'s Mot. at 5, ECF No. 31. Defendant filed a response to Plaintiff's Motion on June 23, 2021. Def.'s Resp. in Opp'n to Pl.'s Mot. for Recons. (Def.'s Resp.), ECF No. 33. Defendant argues that Plaintiff's evidentiary arguments are without merit and that Plaintiff's request to amend its complaint is both procedurally inappropriate and futile. *See id.* Plaintiff filed a reply brief on July 14, 2021, and the Motion is ripe for consideration. Pl.'s Reply in Supp. of Mot. for Recons. (Pl.'s Reply), ECF No. 34. For the reasons that follow, Plaintiff's Motion is denied.

1. Plaintiff improperly seeks leave to amend its complaint via a Rule 59 motion for reconsideration rather than a Rule 15 motion to amend pleadings. Nonetheless, the Court will consider Plaintiff's request because, even if properly filed, it would fail for futility.

*Appendix B***BACKGROUND**

The Court presumes familiarity with the facts of this case as set forth in its previous opinion, *see Acquisition 362 I*, 517 F.Supp.3d at 1320-22, and recounts those facts relevant to the disposition of this Motion. Plaintiff imported tires from China on several occasions throughout 2016. Compl. ¶ 7, ECF No. 5; Pl.'s Mem. of Law in Opp'n to Def.'s Mot. to Dismiss (Pl.'s Mem.) at 2, ECF No. 27. These tire imports were subject to a 2015 countervailing duty order issued by the U.S. Department of Commerce (Commerce). Consequently, Plaintiff deposited payment at the then-current countervailing duty rate — 30.61%. Pl.'s Mem. at 2, ECF No. 27. U.S. Customs and Border Protection (Customs) liquidated Plaintiff's entries between October 19, 2018 and November 9, 2018, at the 30.61% countervailing duty rate. Compl. ¶ 11, ECF No. 5; Summons, ECF No. 1-1. On June 17, 2019, Commerce concluded an administrative review, initiated by other parties, determining that the applicable countervailing duty amount for tires from China should be nearly cut in half — from 30.61% to 15.56%. *See Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2016*, 84 Fed. Reg. 28,011 (June 17, 2019); Pl.'s Mem. at 2, ECF No. 27.

In *Acquisition 362 I*, Plaintiff, claiming jurisdiction under 28 U.S.C. § 1581(a), sought to protest Customs's failure to assess the amended countervailing duties on Plaintiff's 2016 entries. Pl.'s Mem. at 1, ECF No. 27;

Appendix B

Compl. ¶ 2, ECF No. 5. Despite acknowledging filing its protests outside the required 180-day post-liquidation time period, Plaintiff urged this Court to identify an alternative starting point for the 180-day clock. *See* Pl.'s Mem. at 7, ECF No. 27. Specifically, Plaintiff argued this Court should recognize the date Customs received amended countervailing duty rates from Commerce as the starting date for the 180-day time period to file a valid protest. *Id.* at 7.

Defendant argued that the alleged decision Plaintiff sought to protest was not a Customs decision for which Plaintiff could assert a valid protest. *See* Def.'s Reply in Supp. of Mot. to Dismiss (Def.'s Reply) at 9, ECF No. 28. Further, because the Plaintiff failed to file its protests within 180-days of a recognized Customs decision, Defendant argued Plaintiff failed to meet the jurisdictional prerequisites necessary to bring a successful challenge before this Court under 28 U.S.C. § 1581(a). *See* Def.'s Mot. to Dismiss (Def.'s Mot.) at 12, ECF No. 25.

On April 21, 2021, the Court granted Defendant's Motion to Dismiss. *See generally Acquisition 362 I*, 517 F.Supp.3d 1318. In its decision, the Court found that the Plaintiff's challenge failed for two reasons. *Id.* First, Plaintiff invoked the wrong jurisdictional statute to challenge the actual decision with which it took issue — the countervailing duty rate determined by Commerce rather than by Customs. *Id.* at 1322-24. Second, even if Plaintiff's protests were permissible, because they were filed outside the required 180-day time period, they would be untimely and thus deprive the Court of jurisdiction. *Id.*

Appendix B

at 1324. Plaintiff subsequently moved on May 19, 2021, for this Court to reconsider its decision in *Acquisition 362 I*. Pl.'s Mot., ECF No. 31.

Plaintiff argues that newly-discovered, previously-unavailable evidence warrants reconsideration of the Court's Order. Pl.'s Mot. at 4, ECF No. 31. Plaintiff's newly-discovered evidence consists of a protest filed with Customs that is allegedly similar to the protests in *Acquisition 362 I* yet was decided differently. Decl. of Heather Marx in Supp. of Pl.'s Mot. for Recons. (Decl.), ECF No. 32. On May 1, 2020, Customs liquidated one of Plaintiff's entries from December 2015. Decl., ECF No. 32-1 at 2. On August 5, 2020, less than 180 days later, Plaintiff filed a protest with Customs on the same grounds argued in the protests at issue in *Acquisition 362 I*. *Id.* Nine days after this Court issued its opinion in *Acquisition 362 I*, Customs issued a decision regarding Plaintiff's August 2020 protest, assessing a lower countervailing duty rate of 15.53%.² Decl., ECF No. 32-2 at 2.

The Government opposes Plaintiff's Motion. *See* Def.'s Resp., ECF No. 33. It argues that Plaintiff's alleged newly-discovered evidence fails to show that the Court erred in dismissing this case for lack of subject matter jurisdiction. *Id.* at 3. Unlike the protests at issue in *Acquisition 362 I*,

2. This rate differs from the 15.56% rate listed in Commerce's 2019 final order establishing a reduced duty. *Cf. Amended Final Results of Countervailing Duty Administrative Review*, 84 Fed. Reg. at 28,012. The discrepancy of 0.03% is not explained in the materials before the Court; however, it is immaterial to the disposition of the Motion.

Appendix B

Plaintiff's August 2020 protest was timely filed — within 180 days of liquidation. *Id.* Therefore, the Government argues, this newly-discovered evidence fails to undermine the Court's rationale for dismissing Plaintiff's original challenge for lack of subject matter jurisdiction. *Id.*

The Government also opposes the Plaintiff's request for leave to amend its complaint to assert jurisdiction under 28 U.S.C. § 1581(i) for two reasons. Def.'s Resp. at 4, ECF No. 32. First, the Government argues the Plaintiff's amendment to its complaint would improperly create jurisdiction by alleging an entirely new claim based on events after Plaintiff's filing suit. *Id.* Second, any amendment alleging jurisdiction under 28 U.S.C. § 1581(i) would be futile because such jurisdiction is not available in this case. Def.'s Resp. at 5, ECF No. 32.

STANDARD OF REVIEW

Plaintiff moves the Court to reconsider, alter, or amend its prior decision under USCIT Rule 59(a)(1)(B), which is a mechanism for requests for reconsideration in the Court of International Trade.³ *See United States*

3. Despite the plain text of Rule 59 referring to “actions which have been tried and gone to judgment,” longstanding decisions of this Court identify Rule 59 as allegedly broad enough to include “rehearing of any matter decided by the court without a jury.” *Nat'l Corn Growers Ass'n v. Baker*, 623 F.Supp. 1262, 1274, 9 Ct. Int'l Trade 571 (Ct. Int'l Trade 1985). Regardless of whether USCIT Rule 59 or USCIT Rule 60 is the more textually appropriate basis for Plaintiff's Motion, this Court has the power to reconsider its prior opinion. *Compare* USCIT Rule 59(a)(1)(B)

Appendix B

v. UPS Customhouse Brokerage, Inc., 714 F. Supp.2d 1296, 1300, 34 Ct. Int'l Trade 745, Slip Op. 2010-70 (Ct. Int'l Trade 2010). Under USCIT Rule 59(a)(1)(B), “The court may, on motion, grant a new trial or rehearing on all or some of the issues — and to any party... after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.” USCIT Rule 59(a)(1)(B). The grant of a motion for reconsideration is within the sound discretion of the Court. *UPS Customhouse Brokerage, Inc.*, 714 F.Supp.2d at 1300 (citing *Yuba Nat. Res., Inc. v. United States*, 904 F.2d 1577, 1583 (Fed. Cir. 1990)).

Reconsideration or rehearing of a case is proper when “a significant flaw in the conduct of the original proceeding” exists. *Union Camp Corp. v. United States*, 963 F.Supp. 1212, 1213, 21 Ct. Int'l Trade 371, SLIP OP. 97-45 (Ct. Int'l Trade 1997) (quoting *Kerr-McGee Chem. Corp. v. United States*, 14 CIT 582, 583, SLIP OP. 90-81 (1990)). Examples include:

- (1) an error or irregularity in the trial;
- (2) a serious evidentiary flaw;
- (3) a discovery of important new evidence which was not available even to the diligent party at the time of trial;
- or (4) an occurrence at trial in the nature

(invoked by Plaintiff here and providing for rehearing “for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court”), *with* USCIT Rule 60(b) (providing that the Court “may relieve a party or its legal representative from a *final judgment, order, or proceeding*” for any of the listed reasons (emphasis added)).

Appendix B

of an accident or unpredictable surprise or unavoidable mistake which impaired a party's ability to adequately present its case[,] and must be addressed by the Court.

Id. at 1213 (quoting *United States v. Gold Mountain Coffee, Ltd.*, 601 F.Supp. 212, 214, 8 Ct. Int'l Trade 336 (Ct. Int'l Trade 1984)).

The purpose of a Rule 59 motion is not to allow the losing party to reargue its case. *Peerless Clothing Int'l, Inc. v. United States*, 991 F.Supp.2d 1335, 1337 (Ct. Int'l Trade 2014). The Court should not disturb its prior decision unless it is manifestly erroneous. *Papierfabrik August Koehler SE v. United States*, 44 F.Supp.3d 1356, 1357, SLIP OP. 15-4, SLIP OP. 2015-4 (Ct. Int'l Trade 2015).

DISCUSSION

Plaintiff requests that the Court reconsider its decision in *Acquisition 362 I*. See Pl.'s Mot., ECF No. 31. Plaintiff submits as new evidence a successful protest filed with Customs that Plaintiff argues is identical to the protests at issue in *Acquisition 362 I*. See Decl., ECF No. 32. Both the protest submitted as new evidence in this Motion and the protests at issue in *Acquisition 362 I* relate to the Plaintiff's assertion that the countervailing duties assessed against it should have been reduced following Commerce's administrative review. Compare Protests, ECF Nos. 11-21, 24, with Decl., ECF. No 32. Customs denied the protests in *Acquisition 362 I* as

Appendix B

untimely; therefore, no reduction in countervailing duties resulted. Protests, ECF Nos. 11-21, 24. Conversely, Customs granted the protest submitted by Plaintiff as new evidence; and Plaintiff received a reduction in the countervailing duties assessed. Decl. at 13, ECF No. 32. To the Plaintiff, the difference in results between these protests indicates Customs was incorrect in denying the original protests adjudicated in *Acquisition 362 I*.

Defendant opposes Plaintiff's Motion, arguing the Plaintiff's new evidence fails to satisfy the burden for reconsideration. Def.'s Resp. at 3, ECF No. 33. Without addressing the issues raised by the Plaintiff in each protest, the Defendant notes the important timeline differences between the original protests and the August 2020 protest submitted as new evidence. *Id.* Defendant argues the timeline differences alone are enough to reject Plaintiff's Motion. *Id.* The Defendant also objects to Plaintiff's belated attempt to assert jurisdiction under 28 U.S.C. § 1581(i). *Id.*

Plaintiff's claims failed in *Acquisition 362 I* not because of substance but because of procedure. The law requires any protest of a Customs decision to be filed within 180 days of that decision. *See* 19 U.S.C. § 1514(c). The decision at issue was Customs's liquidations of Plaintiff's entries. *Acquisition 362 I*, 517 F.Supp.3d at 1324. Filing a timely protest is a mandatory prerequisite to invoking this Court's jurisdiction to review Customs's protest decision. *See* 19 U.S.C. § 1514(a) (providing that Customs's liquidation "shall be final and conclusive upon all persons . . . unless a protest is filed" timely); *U.S. JVC*

Appendix B

Corp. v. United States, 15 F.Supp.2d 906, 909, 22 Ct. Int'l Trade 687, SLIP OP. 22-687, Slip Op. 98-97 (Ct. Int'l Trade 1998) (“[A] protest must have been timely filed under 19 U.S.C. § 1514(c)(3) for this Court to obtain jurisdiction over a suit that contests its denial.”). Plaintiff frankly acknowledged it filed its protests more than 180 days following the entries’ liquidation. Pl.’s Mem. at 9, ECF No. 27. Thus, it matters not that Customs applied the “wrong” rate; this Court lacks jurisdiction to hear Plaintiff’s suit to contest the error because Plaintiff waited too long to protest.

Not so with the August 2020 protest. Customs liquidated the entry at issue on May 1, 2020. Decl., ECF No. 32-1 at 2. Ninety-six days later, Plaintiff filed its protest on August 5, 2020, well within the 180-day deadline. *See id.* Having filed both a timely protest *and* a valid protest, Plaintiff received the lower rate it sought. Decl., ECF No. 32-2 at 2. The lesson is both clear and stark: Don’t sit on your rights. *See JVC Corp.*, 15 F.Supp.2d at 909. That Plaintiff later filed a timely protest of a different liquidation cannot grant the Court jurisdiction to review previous, untimely protests. Plaintiff’s Motion for Reconsideration is denied.

Regarding Plaintiff’s request to amend its complaint to state a new claim under Section 1581(i), Section 1581(i) embodies a “residual” grant of jurisdiction and may not be invoked when jurisdiction under another subsection of § 1581 is or could have been available. *Sunprime, Inc. v. United States*, 892 F.3d 1186, 1191 (Fed. Cir. 2018) (quoting *Fujitsu Gen. Am., Inc. v. United States*, 283 F.3d 1364, 1371 (Fed. Cir. 2002)). Plaintiff had at least one clear route

Appendix B

to properly invoke this Court's jurisdiction. Had Plaintiff filed its protest within 180 days of Customs's liquidation of the challenged entries, this Court would have had jurisdiction to review Customs's decision.⁴ *See JVC Corp.*, 15 F.Supp.2d at 909. Because "another subsection of § 1581 is or could have been available" and that remedy would not be "manifestly inadequate," Section 1581(i) "may not be invoked." *Sunprime, Inc.*, 892 F.3d at 1192 (quoting *Int'l Custom Prods., Inc. v. United States*, 467 F.3d 1324, 1327 (Fed. Cir. 2006)). Plaintiff's proposed complaint amendment would be of no use, and its Motion to do so is denied as futile. *See Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962).

CONCLUSION

Plaintiff has failed to identify a "significant flaw" in the Court's opinion. *Cf. Union Camp Corp.*, 963 F.Supp. at 1213. It has also failed to provide a basis for invoking this Court's residual jurisdiction under Section 1581(i) via an amended complaint. Plaintiff's Motion is **DENIED**.

/s/ Stephen Alexander Vaden
Stephen Alexander Vaden, Judge

Dated: September 20, 2021
New York, New York

4. In addition to jurisdiction under Section 1581(a) to protest Customs's actions, Plaintiff may also have had resort to Section 1581(c) to contest Commerce's determination of the duty rate if Plaintiff instead wished to challenge that decision. *See Acquisition 362 I*, 517 F.Supp.3d at 1324.

**APPENDIX C — OPINION OF THE UNITED
STATES COURT OF INTERNATIONAL TRADE,
FILED APRIL 21, 2021**

UNITED STATES COURT OF
INTERNATIONAL TRADE

Court No. 1:20-cv-03762

ACQUISITION 362, LLC DBA
STRATEGIC IMPORT SUPPLY,

Plaintiff,

v.

UNITED STATES,

Defendant.

Before: Stephen Alexander Vaden, Judge.

April 21, 2021, Decided

OPINION

[Granting Defendant's motion to dismiss for lack of subject matter jurisdiction.]

Dated: April 21, 2021

Vaden, Judge: Plaintiff Acquisition 362, LLC, doing business as Strategic Import Supply, filed this case

Appendix C

under Section 515 of the Tariff Act of 1930, as amended, contesting the denial of its protests over countervailing duties. Specifically, Plaintiff challenges a decision by U.S. Customs and Border Protection (Customs) to assess countervailing duties on the importation from the People's Republic of China (China) of certain passenger vehicle and light truck tires over the course of multiple entries throughout 2016. Compl., ECF No. 5. Before the Court is the Government's motion to dismiss for lack of subject matter jurisdiction. Def.'s Mot. to Dismiss (Def.'s Mot.), ECF No. 25. For the reasons set forth below, this Court finds that it lacks subject matter jurisdiction and grants the Government's motion.

BACKGROUND

On August 10, 2015, the U.S. Department of Commerce (Commerce) issued a countervailing duty order regarding tires from China. *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China*, 80 Fed. Reg. 47902 (Aug. 10, 2015). Commerce's order included tire imports from Zhongyi Rubber Company Ltd. (Zhongyi). *See* Compl. ¶ 4, ECF No. 5; 80 Fed. Reg. at 47905. Plaintiff, an importer of tires, imported tires from Zhongyi on several occasions in 2016. Compl. ¶ 7, ECF No. 5; Pl.'s Mem. of Law in Opp'n to Def.'s Mot. to Dismiss (Pl.'s Mem.) at 2, ECF No. 27. Because Plaintiff's tire imports were subject to the duties established in Commerce's 2015 order, it "deposited payment of the assessed countervailing duties at a rate of 30.61%, the rate assigned...at the time entries were made." Pl.'s Mem. at 2, ECF No. 27.

Appendix C

Zhongyi and other interested parties requested that Commerce initiate an administrative review of its 2015 order. *Id.* at 7; Protests and Entries from the Port of Wilmington, NC., ECF No. 11-1 at 8 (Protest NC). Commerce agreed and published a notice in the Federal Register on October 16, 2017. *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 Fed. Reg. 48051 (Oct. 16, 2017). Zhongyi would later withdraw its individual request for administrative review and therefore “Commerce rescinded this review of the [countervailing duty] Order on...tires from China with regard to Zhongyi.”¹ Protest NC, ECF No. 11-1 at 8.

If an interested party, domestic or otherwise, does not request an administrative review of the applicability of a countervailing duty order to it, the regulations require the Secretary of Commerce to instruct Customs to assess countervailing duties on merchandise described by the order. 19 C.F.R. § 351.212(c). As such, Customs liquidated Plaintiff’s entries between October 19, 2018 and November 9, 2018, at the 30.61% countervailing duty rate. Compl. ¶ 11, ECF No. 5; Summons ECF No. 1-1. Plaintiff did not file a protest of the liquidation within 180 days of its completion. *Cf.* 19 U.S.C. § 1514(c)(3).

On June 17, 2019, Commerce issued its Amended Final Results following its administrative review of the

1. Plaintiff submits Zhongyi withdrew its request for review because it was a non-selected company under review under an alternative company name, Dongying Zhongyi Rubber Co., Ltd. Plaintiff further submits “Zhongyi and Dongying Zhongyi are one in the same company.” Protest NC, ECF No. 11-1 at 8.

Appendix C

Countervailing Duty Order. *See Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review*; 2016, 84 Fed. Reg. 28011 (June 17, 2019) (Amended Final Results); Pl.'s Mem. at 2, ECF No. 27. The Amended Final Results concluded that the applicable countervailing duty amount should be nearly cut in half — from 30.61% to 15.56%. *Id.* at 28012. The International Trade Administration (ITA) issued Message No. 9184301 to Customs on July 3, 2019, instructing Customs to liquidate the relevant entries at the newly calculated rate.² Pl.'s Mem. at 3, ECF No. 27; *Liquidation instructions for passenger vehicle and light truck tires from the People's Republic of China for the period of 01/01/2016 through 12/31/2016*, ITA Message No. 9184301 (July 3, 2019) available at <https://aceservices.cbp.dhs.gov/adcvdweb/#9184301> (last visited Apr. 16, 2021).

Plaintiff filed protests on December 12 and December 13, 2019, for each already liquidated entry for its 2016 tire imports. Pl.'s Mem. at 4. Customs denied Plaintiff's

2. Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Tariff Act of 1930, which provides instructions for calculating the all-others rate in an investigation. For non-selected companies subject to review by Commerce's administrative review, the ITA calculates the appropriate countervailing duty rate. This non-selected rate is the catch-all rate that would apply to companies not selected for individual examination by Commerce in an administrative review. 19 U.S.C. § 1671d(c)(1)(B)(i)(I). Plaintiff has not challenged Commerce's rate determination.

Appendix C

protests as untimely and emailed the rejection notices to Plaintiff on April 24, 2020. Protests, ECF Nos. 11 to 21, 24. Plaintiff argues the protests were timely as they were filed within 180 days of Customs' decision not to apply an amended countervailing duty rate after receipt of instructions from the ITA to assess amended duty rates. Plaintiff subsequently commenced this action on October 15, 2020, to challenge the denial of the protests. Summons, ECF No. 1.

The Government moves to dismiss Plaintiff's Complaint. It argues that 19 U.S.C. § 1514(a) enumerates the Customs decisions that are protestable, a prerequisite to asserting jurisdiction under 28 U.S.C. § 1581(a). Unless a party files a protest of those enumerated actions within the required time limits, Customs' decision becomes final and conclusive. *See* 19 U.S.C. § 1514. The Government claims that Plaintiff's challenge to Customs' "decision" not to apply the amended countervailing duty rates to Plaintiff's already liquidated entries is not a valid claim under section 1514 because Customs made no decision that may now be challenged. *See* Def.'s Reply in Supp. of Mot. to Dismiss (Def.'s Reply) at 9, ECF No. 28. To the Government, it is simple: Because Plaintiff's protests arrived more than 180 days after the liquidations, Plaintiff is precluded from challenging the denial of its untimely protests now that Commerce has agreed the duty rate should be less. *See* Def.'s Mot. at 12, ECF No. 25. Accordingly, the Government argues that this Court lacks subject-matter jurisdiction to hear Plaintiff's case.

*Appendix C***STANDARD OF REVIEW**

“[A] court’s subject-matter jurisdiction defines its power to hear cases.” *Lightfoot v. Cendant Mortgage Corp.*, 137 S. Ct. 553, 560, 196 L. Ed. 2d 493 (2017). To adjudicate a case, a court must have subject-matter jurisdiction over the claim presented. *See Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94-95, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998). Even where the parties themselves fail to raise the issue, “federal courts have a duty to consider their subject matter jurisdiction in regard to every case and may raise the issue *sua sponte*.” *Answers in Genesis of Kentucky, Inc. v. Creation Ministries Int’l., Ltd.*, 556 F.3d 459, 465 (6th Cir. 2009); *see also Capron v. Van Noorden*, 6 U.S. (2 Cranch) 126, 127, 2 L. Ed. 229 (1804) (“[I]t [is] the duty of the Court to see that they had jurisdiction, for the consent of the parties could not give it.”). “[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the [claim] in its entirety.” *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235, 163 L. Ed. 2d 1097 (2006).

This Court’s jurisdiction under 28 U.S.C. § 1581(a) provides for “exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.” Section 1581(a) grants this Court jurisdiction over Customs’ denial of protests and “provides no jurisdiction for protests outside the [] exclusive categories’ listed in 19 U.S.C. § 1514(a).” *Sunpreme Inc. v. United States*, 892 F.3d 1186, 1191 (Fed. Cir. 2018) (quoting *Mitsubishi Elecs. Am., Inc. v. United States*, 44 F.3d 973, 976 (Fed. Cir.

Appendix C

1994)) (brackets in original). A plaintiff bears the burden of establishing subject-matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994). In resolving disputed predicate jurisdictional facts, this Court may review evidence extrinsic to the pleadings. *Shoshone Indian Tribe of Wind River Reservation, Wyo. v. United States*, 672 F.3d 1021, 1030 (Fed. Cir. 2012).

This Court’s jurisdiction is limited furthermore to cases in which the United States has waived sovereign immunity and consented to suit. *United States v. Mitchell*, 445 U.S. 535, 538, 100 S. Ct. 1349, 63 L. Ed. 2d 607 (1980). Consent cannot be implied “but must be unequivocally expressed.” *Id.* Without jurisdictional statutes enacted by Congress authorizing suit against the United States, there would be no jurisdiction to entertain claims against the United States. *Id.* Plaintiff must demonstrate that its claims come within the confines of the statutory conditions set by Congress. *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 103 S. Ct. 3274, 77 L. Ed. 2d 938 (1983) (holding that waivers of immunity authorized by statute must be construed strictly in favor of the sovereign and not enlarged beyond what the language requires).

DISCUSSION

Plaintiff claims jurisdiction under 28 U.S.C. § 1581(a), asserting it “is protesting the decision by U.S. Customs and Border Protection...to ignore the mandate of the Amended Final Results issued by the U.S. Department of Commerce...and instructions from the International

Appendix C

Trade Administration.” Pl.’s Mem. at 1, ECF No. 27; Compl. ¶ 2, ECF No. 5. Although Plaintiff acknowledges it filed the protests with Customs later than 180 days after liquidation, it argues the 180-day clock should not have begun at the time of liquidation. *See* Pl.’s Mem. at 7, ECF No. 27. Instead, Plaintiff argues its protests were timely because they were filed within 180 days of Customs’ receipt of instructions from Commerce. *Id.* at 7. The Government responds that, because Plaintiff’s protests were filed more than 180 days after liquidation, the protests are untimely and fail to meet the requirements necessary to establish jurisdiction before this Court. *See* Def.’s Mot. at 6, ECF No. 25; Def.’s Reply at 4, ECF No. 28. As both sides acknowledge the jurisdiction-robbing 180-day deadline to file a valid protest, the dispute here is over when that 180-day time period begins.

I

Although 28 U.S.C. § 1581(a) provides for exclusive jurisdiction to contest the denial of a protest under 19 U.S.C. § 1515, there are procedural prerequisites to obtaining that jurisdiction. Section 1514 provides those prerequisites necessary to establish a valid challenge of a protest denial. 19 U.S.C. § 1514. It provides that all Customs decisions, including liquidation, become final unless a party files a protest. 19 U.S.C. § 1514(a). The section then identifies the decisions that are subject to protest:

[D]ecisions of the Customs Service, including the legality of all orders and findings entering into the same, as to

Appendix C

(1) the appraised value of merchandise;

(2) the classification and rate and amount of duties chargeable;

(3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 1337 of this title;

(5) the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof;

(6) the refusal to pay a claim for drawback; or

(7) the refusal to reliquidate an entry under section 1520(c) of this title;

shall be final and conclusive upon all persons... unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade....

Appendix C

19 U.S.C § 1514(a) (emphasis added to identify the Customs decisions relevant to the present matter). The same section establishes time limits for protesting a Customs decision. 19 U.S.C. § 1514(c). A valid protest must be filed within 180 days of the Customs decision. *Id.* Taken together, these two sections mean “a protest must have been timely filed under 19 U.S.C. § 1514(c)(3) for this Court to obtain jurisdiction over a suit that contests its denial.” *US JVC Corp. v. United States*, 15 F. Supp. 2d 906, 909, 22 Ct. Int’l Trade 687, Slip Op. 22-687, Slip Op. 98-97 (CIT 1998); *accord Mitsubishi Elecs. Am., Inc. v. United States*, 44 F.3d 973 (Fed. Cir. 1994).

Plaintiff urges the Court to consider the protests timely “because they were filed within 180 days following the issuance of the decision to implement the Amended Final Results” supplied by Commerce to Customs. Pl.’s Mem. at 7, ECF No. 27. Herein lies the problem with Plaintiff’s argument that Customs’ receipt of amended countervailing duty rates from Commerce is a Customs decision that triggers the 180-day time period. This Court has held, and the Federal Circuit has affirmed, that determinations of countervailing duty and antidumping duty rates are not Customs decisions but rather Commerce decisions. *See, e.g., Mitsubishi Elecs, Am.*, 44 F.3d at 977 (holding that decisions about the rate of an antidumping duty are made by Commerce and Customs’ role is to apply Commerce’s instructions). Customs holds but a ministerial role in implementation once these rate decisions are shared with it. *Id.* Therefore, the Plaintiff cannot carry its burden because it cannot (and has not) identified a Customs decision that it timely protested. *See Sunpreme,*

Appendix C

892 F.3d at 1192-94; *Mitsubishi Elecs. Am.*, 44 F.3d at 975, 977-78. If the Plaintiff sought to challenge Commerce's imposition of countervailing duties or its determination of a countervailing duty rate, an action should have been brought before this Court under its 28 U.S.C. § 1581(c) jurisdiction and not its § 1581(a) jurisdiction, as Plaintiff has done here.³ *See* 19 U.S.C. § 1516a.

II

The application of the allegedly improper countervailing duty rates to Plaintiff's entries occurred from October 19 through November 9, 2018, when Customs liquidated Plaintiff's entries. Summons at 4, ECF No. 1; Def.'s Mot. at 2, ECF No. 25. A timely protest of Customs' liquidation had to be filed within 180 days of that liquidation. 19 U.S.C. § 1514. Plaintiff acknowledges filing outside the 180-day post-liquidation time period. *See* Pl.'s Mem. at 9, ECF No. 27. Therefore, even if the Court were to assume that the protests Plaintiff filed were valid, this Court lacks

3. Because Zhongyi withdrew its request to Commerce to review the countervailing duty order, Customs assessed the countervailing duties on these non-reviewed entries in accordance with the final determination in effect at the time of entry. *See Capella Sales & Servs. Ltd. v. United States, Aluminum Extrusions Fair Trade Comm.*, 878 F.3d 1329, 1335 (Fed. Cir. 2018) ("We do not question the authority of [Commerce], pursuant to its regulation, to liquidate entries...at the rate set in the original antidumping duty order when there has been no challenge to the validity of that order and no request for annual review.") (quoting *Asociacion Colombiana de Exportadores de Flores v. United States*, 916 F.2d 1571, 1577 (Fed. Cir. 1990)) (omission and alteration in original).

Appendix C

jurisdiction over the denial of Plaintiff's protests because of their untimeliness.

CONCLUSION

Plaintiff's challenge before this Court fails for two separate reasons. First, by using a protest against Customs to dispute a determination made by Commerce, Plaintiff has invoked the wrong jurisdictional statute. *Compare* 28 U.S.C. § 1581(a) (providing jurisdiction over denials of Customs protests) *with* 28 U.S.C. § 1581(c) (providing jurisdiction for challenges to determinations of countervailing duty rates by Commerce). Second, Plaintiff's admission that it filed its protests more than 180 days after Customs liquidated its entries also proves fatal. Were Plaintiff's protests permissible, they would be untimely and thus deprive the Court of jurisdiction. Either reason is sufficient to require dismissal; and for both the foregoing reasons, Defendant's motion to dismiss is **GRANTED**.

/s/ Stephen Alexander Vaden
Stephen Alexander Vaden, Judge

Dated: April 21, 2021
New York, New York

**APPENDIX D — STATUTES AND
REGULATIONS**

19 U.S.C. § 1514

§ 1514. Protest against decisions of the Customs Service

(a) Finality of decisions; return of papers.

Except as provided in subsection (b) of this section, section 501 [19 USCS § 1501] (relating to voluntary reliquidations), section 516 [19 USCS § 1516] (relating to petitions by domestic interested parties[.]), section 520 (relating to refunds) [19 USCS § 1520], and section 6501 of the Internal Revenue Code of 1986 [26 USCS § 6501] (but only with respect to taxes imposed under chapters 51 and 52 of such Code [26 USCS §§ 5001 et seq. and 5701 et seq.]), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic transmission, adverse to the importer, in any entry, liquidation, or reliquidation, and, decisions of the Customs Service, including the legality of all orders and findings entering into the same, as to—

- (1) the appraised value of merchandise;
- (2) the classification and rate and amount of duties chargeable;
- (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

Appendix D

(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 337 of this Act [19 USCS § 1337];

(5) the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof, including the liquidation of an entry, pursuant to either section 500 or section 504 [19 USCS § 1500 or 1504];

(6) the refusal to pay a claim for drawback; or

(7) the refusal to reliquidate an entry under subsection (d) of section 520 of this Act [19 USCS § 1520];

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 of the United States Code [28 USCS §§ 2631 et seq.] within the time prescribed by section 2636 [28 USCS § 2636]. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the Customs Service, which shall take action accordingly.

Appendix D

(b) Finality of determinations. With respect to determinations made under section 303 of this Act [19 USCS § 1303] or title VII of this Act [19 USCS §§ 1671 et seq.] which are reviewable under section 516A of this title [19 USCS § 1516a], determinations of the Customs Service are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 516A of this title [19 USCS § 1516a] is commenced in the United States Court of International Trade, or review by a binational panel of a determination to which section 516A(g)(2) [19 USCS § 1516a(g)(2)] applies is commenced pursuant to section 516A(g) [19 USCS § 1516a(g)].

(c) Form, number, and amendment of protest; filing of protest.

(1) A protest of a decision made under subsection (a) shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically—

(A) each decision described in subsection (a) as to which protest is made;

(B) each category of merchandise affected by each decision set forth under paragraph (1);

(C) the nature of each objection and the reasons therefor; and

Appendix D

(D) any other matter required by the Secretary by regulation.

Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. In addition, separate protests filed by different authorized persons with respect to any one category of merchandise, or with respect to a determination of origin under section 202 of the United States-Mexico-Canada Agreement Implementation Act [19 USCS § 4531], that is the subject of a protest are deemed to be part of a single protest. Unless a request for accelerated disposition is filed under section 515(b) [19 USCS § 1515(b)], a protest may be amended, under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 515 of this Act [19 USCS § 1515] at any time prior to the disposition of the protest in accordance with that section.

(2) Except as provided in sections 485(d) and 557(b) of this Act [19 USCS §§ 1485(d) and 1557(b)], protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section by—

Appendix D

(A) the importers or consignees shown on the entry papers, or their sureties;

(B) any person paying any charge or exaction;

(C) any person seeking entry or delivery;

(D) any person filing a claim for drawback;

(E) with respect to a determination of origin under section 202 of the United States-Mexico-Canada Agreement Implementation Act [19 USCS § 4531], any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a USMCA certification of origin (as such term is defined in section 508 of this Act [unclassified]) covering the merchandise; or

(F) any authorized agent of any of the persons described in clauses (A) through (E).

(3) A protest of a decision, order, or finding described in subsection (a) shall be filed with the Customs Service within 180 days after but not before—

(A) date of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

Appendix D

A protest by a surety which has an unsatisfied legal claim under its bond may be filed within 180 days from the date of mailing of notice of demand for payment against its bond. If another party has not filed a timely protest, the surety's protest shall certify that it is not being filed collusively to extend another authorized person's time to protest as specified in this subsection.

(d) Limitation on protest of reliquidation. The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the Customs Service upon any question not involved in such reliquidation.

(e) Advance notice of certain determinations. Except as provided in subsection (f), an exporter or producer referred to in subsection (c)(2)(E) shall be provided notice in advance of an adverse determination of origin under section 202 of the United States-Mexico-Canada Agreement Implementation Act [19 USCS § 4531]. The Secretary may, by regulations, prescribe the time period in which such advance notice shall be issued and authorize the Customs Service to provide in the notice the entry number and any other entry information considered necessary to allow the exporter or producer to exercise the rights provided by this section.

(f) Denial of preferential tariff treatment under the USMCA. If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or

Appendix D

unsupported representations that goods qualify under the rules of origin provided for in section 202 of the United States-Mexico-Canada Agreement Implementation Act [19 USCS § 4531], U.S. Customs and Border Protection, in accordance with regulations prescribed by the Secretary of the Treasury, may suspend preferential tariff treatment under the USMCA (as defined in section 3 of that Act [19 USCS § 4502]) to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 202 [19 USCS § 4531] until the person establishes to the satisfaction of the Customs Service that its representations are in conformity with section 202 [19 USCS § 3332].

(g) Denial of preferential tariff treatment under United States-Chile Free Trade Agreement. If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an importer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the United States-Chile Free Trade Agreement Implementation Act [19 USCS § 3805 note], the Bureau of Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may deny preferential tariff treatment under the United States-Chile Free Trade Agreement to entries of identical goods imported by that person until the person establishes to the satisfaction of the Bureau of Customs and Border Protection that representations of that person are in conformity with such section 202.

Appendix D

(h) Denial of preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement. If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act [19 USCS § 4033], the Bureau of Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until the Bureau of Customs and Border Protection determines that representations of that person are in conformity with such section 203.

(i) Denial of preferential tariff treatment under the United States-Peru Trade Promotion Agreement. If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin provided for in section 203 of the United States-Peru Trade Promotion Agreement Implementation Act [19 USCS § 3805 note], U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States-Peru Trade

Appendix D

Promotion Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 203.

(j) Denial of preferential tariff treatment under the United States-Korea Free Trade Agreement. If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin provided for in section 202 of the United States-Korea Free Trade Agreement Implementation Act [19 USCS § 3805 note], U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States-Korea Free Trade Agreement Implementation Act to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 202.

(k) Denial of preferential tariff treatment under the United States-Colombia Trade Promotion Agreement. If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of

Appendix D

origin provided for in section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act [19 USCS § 3805 note], U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States-Colombia Trade Promotion Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 203.

(I) Denial of preferential tariff treatment under the United States-Panama Trade Promotion Agreement. If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin provided for in section 203 of the United States-Panama Trade Promotion Agreement Implementation Act [19 USCS § 3805 note], U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States-Panama Trade Promotion Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 203.

Appendix D

28 U.S.C. § 1581

§ 1581. Civil actions against the United States and agencies and officers thereof

(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930 [19 USCS § 1515].

(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930 [19 USCS § 1516].

(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A or 517 of the Tariff Act of 1930 [19 USCS § 1516a or 1517].

(d) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

(1) any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 [19 USCS § 2273] with respect to the eligibility of workers for adjustment assistance under such Act;

(2) any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 [19 USCS § 2341] with respect to the eligibility of a firm for adjustment assistance under such Act;

Appendix D

(3) any final determination of the Secretary of Commerce under section 273 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act; and

(4) any final determination of the Secretary of Agriculture under section 293 or 296 of the Trade Act of 1974 (19 U.S.C. 2401b) with respect to the eligibility of a group of agricultural commodity producers for adjustment assistance under such Act.

(e) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of the Treasury under section 305(b)(1) of the Trade Agreements Act of 1979 [19 USCS § 2515(b)(1)].

(f) The Court of International Trade shall have exclusive jurisdiction of any civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 [19 USCS § 1677f(c)(2)].

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

(1) any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) of the Tariff Act of 1930 [19 USCS § 1641(b)(2) or (3)], or to deny a customs broker's permit under section 641(c)(1) of such Act [19 USCS § 1641(c)(1)], or

Appendix D

to revoke a license or permit under section 641(b)(5) or (c)(2) of such Act [19 USCS § 1641(b)(5) or (c)(2)];

(2) any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit, or impose a monetary penalty in lieu thereof, under section 641(d)(2)(B) of the Tariff Act of 1930 [19 USCS § 1641(d)(2)(B)]; and

(3) any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930 [19 USCS § 1499(b)].

(h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

Appendix D

- (1) revenue from imports or tonnage;
 - (A) revenue from imports or tonnage;
 - (B) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;
 - (C) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
 - (D) administration and enforcement with respect to the matters referred to in subparagraphs (A) through (C) of this paragraph and subsections (a)–(h) of this section.
- (2) This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable by—
 - (A) the Court of International Trade under section 516A(a) of the Tariff Act of 1930 (19 U.S.C. 1516a(a)); or
 - (B) a binational panel under section 516A(g) of the Tariff Act of 1930 (19 U.S.C. 1516a(g)).
- (j) The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930 [19 USCS § 1305].

Appendix D

28 U.S.C. § 2645

§ 2645. Decisions

(a) A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing a preliminary injunction shall be supported by—

(1) a statement of findings of fact and conclusions of law; or

(2) an opinion stating the reasons and facts upon which the decision is based.

(b) After the Court of International Trade has rendered a judgment, the court may, upon the motion of a party or upon its own motion, amend its findings or make additional findings and may amend the decision and judgment accordingly. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment.

(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted pursuant to section 2646 of this title [28 USCS § 2646] or an appeal is taken to the Court of Appeals for the Federal Circuit by filing a notice of appeal with the clerk of the Court of International Trade within the time and in the manner prescribed for appeals to United States courts of appeals from the United States district courts.

55a

Appendix D

19 C.F.R. 174.12

§ 174.12 Filing of protests.

(a) By whom filed. Protests may be filed by:

- (1) The importer or consignee shown on the entry papers, or their sureties;
- (2) Any person paying, or receiving a refund, of any charge or exaction;
- (3) Any person seeking entry or delivery;
- (4) Any person filing a claim for drawback;
- (5) With respect to a determination of origin under subpart G of part 181 of this chapter, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a Certificate of Origin covering the merchandise as provided for in § 181.11(a) of this chapter; or
- (6) Any authorized agent of any of the persons described in paragraphs (a) (1) through (5) of this section, subject to the provisions of § 174.3.

(b) Form and number of copies. A written protest against a decision of CBP must be filed in quadruplicate on CBP Form 19 or a form of the same size clearly labeled “Protest” and setting forth the same content in its entirety,

Appendix D

in the same order, addressed to CBP. All schedules or other attachments to a protest (other than samples or similar exhibits) must also be filed in quadruplicate. A protest against a decision of CBP may also be transmitted electronically pursuant to any electronic data interchange system authorized by CBP for that purpose. Electronic submissions are not required to be filed in quadruplicate.

(c) Identity of filer. The identity of the person filing the protest or his agent, or attorney shall be noted on the protest. This may be accomplished through a signature which is handwritten in ink, stamped, typed, facsimile, telefax, or by electronic certification in CBP Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system. If the person filing the protest is not the importer of record or consignee, the filer shall include his address and importer number, if any.

(d) Place of filing. Protests shall be filed with CBP, either at the port of entry or electronically.

(e) Time of filing. Protests must be filed, in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 90 days of a decision relating to an entry made before December 18, 2004, or within 180 days of a decision relating to an entry made on or after December 18, 2004, after any of the following:

(1) The date of notice of liquidation or reliquidation, or the date of liquidation or reliquidation, as determined under §§ 159.9 or 159.10 of this chapter;

Appendix D

(2) The date of the decision, involving neither a liquidation nor reliquidation, as to which the protest is made (for example: The date of an exaction; the date of written notice excluding merchandise from entry, delivery or demanding redelivery to CBP custody under any provision of the customs laws; the date of written notice of a denial of a claim filed under section 520(d), Tariff Act of 1930, as amended (19 U.S.C. 1520(d)), or; within 90 days of the date of denial of a petition filed pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), relating to an entry made before December 18, 2004); or

(3) The date of mailing of notice of demand for payment against a bond in the case of a surety which has an unsatisfied legal claim under a bond written by the surety.

(f) Date of filing. The date on which a protest is received by the Customs officer with whom it is required to be filed shall be deemed the date on which it is filed.

(g) Return of fifth copy. If a fifth copy of the protest is presented for the purpose of having recorded thereon the date of its receipt and the protest number assigned thereto, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the protest.

Appendix D

19 C.F.R. 174.13

§ 174.13 Contents of protest.

(a) Contents, in general. A protest shall contain the following information:

- (1) The name and address of the protestant, i.e., the importer of record or consignee, and the name and address of his agent or attorney if signed by one of these;
- (2) The importer number of the protestant. If the protestant is represented by an agent having power of attorney, the importer number of the agent shall also be shown;
- (3) The number and date of the entry;
- (4) The date of liquidation of the entry, or the date of a decision not involving a liquidation or reliquidation;
- (5) A specific description of the merchandise affected by the decision as to which protest is made;
- (6) The nature of, and justification for the objection set forth distinctly and specifically with respect to each category, payment, claim, decision, or refusal;
- (7) The date of receipt and protest number of any protest previously filed that is the subject of a pending application for further review pursuant to subpart C

Appendix D

of this part and that is alleged to involve the same merchandise and the same issues, if the protesting party requests disposition in accordance with the action taken on such previously filed protest;

(8) If another party has not filed a timely protest, the surety's protest shall certify that the protest is not being filed collusively to extend another authorized person's time to protest; and

(9) A declaration, to the best of the protestant's knowledge, as to whether the entry is the subject of drawback, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and § 191.81(b) of this chapter).

(b) Multiple entries. A single protest may be filed with respect to more than one entry with CBP, either at any port or electronically if all such entries involve the same protesting party, and if the same category of merchandise and a decision or decisions common to all entries are the subject of the protest. In such circumstances, the entry numbers, dates of entry, and dates of liquidation of all such entries, should be set forth as an attachment to the protest.

(c) Optional designation for refunds. If desired by the importer/consignee the statement "any refunds with respect to the entry under protest shall be mailed to the importer/consignee in care of _____"

60a

Appendix D

(Name and Address of Agent)

may be appended to the protest. This designation supersedes any existing designation previously authorized on Customs Form 4811.

61a

Appendix D

80 FR 47902

Vol. 80, No. 153, Monday, August 10, 2015

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order

Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing antidumping duty (AD) and countervailing duty (CVD) orders on certain passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (the PRC). Also, as explained in this notice, the Department is amending its final affirmative CVD determination to correct the rate assigned to Shandong Yongsheng Rubber Group Co., Ltd. (Yongsheng). In addition, the Department is amending the final affirmative AD determination to correct the rate assigned to the GITI companies¹ and to the separate rate companies.

1. Giti Tire Global Trading Pte. Ltd., GITI Radial Tire (Anhui) Company Ltd., GITI Tire (Fujian) Company Ltd., GITI Tire (Hualin) Company Ltd., and GITI Tire (USA) Ltd.

*Appendix D***SUPPLEMENTARY INFORMATION:****Background**

On June 18, 2015, with respect to passenger tires from the PRC,² the Department published its final affirmative determination of sales at less than fair value (LTFV) and its final affirmative determination that countervailable subsidies are being provided to producers and exporters of passenger tires from the PRC.³ On August 3, 2015, pursuant to sections 735(d) and 705(d) of the Tariff Act of 1930, as amended (the Act), the ITC notified the Department of its affirmative final determination that an industry in the United States is materially injured within the meaning of sections 735(b)(1)(A)(i) and 705(b)(1)(A)(i) of the Act by reason of LTFV imports and subsidized imports of subject merchandise from the PRC, and its determination that critical circumstances do not exist with respect to imports of subject merchandise from the PRC that are subject to the Department's affirmative critical

2. See *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015) (*AD Final Determination*).

3. See *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015) (*CVD Final Determination*).

Appendix D

circumstances finding.⁴

Scope of the Orders

The scope of these orders is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by these orders may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol “DOT” on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P—Identifies a tire intended primarily for service on passenger cars.

LT—Identifies a tire intended primarily for service on light trucks.

4. See ITC Notification Letter to the Deputy Assistant Secretary for Enforcement and Compliance referencing ITC Investigation Nos. 701-TA-522 and 731-TA-1258 (August 3, 2015) (ITC Notification).

Appendix D

Suffix letter designations:

LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service.

All tires with a “P” or “LT” prefix, and all tires with an “LT” suffix in their sidewall markings are covered by this investigation regardless of their intended use.

In addition, all tires that lack a “P” or “LT” prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope are the following types of tires:

- (1) Racing car tires; such tires do not bear the symbol “DOT” on the sidewall and may be marked with “ZR” in size designation;

Appendix D

- (2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the Tire and Rim Association Year Book;
- (3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;
- (4) non-pneumatic tires, such as solid rubber tires;
- (5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:
 - (a) The size designation and load index combination molded on the tire's sidewall are listed in Table PCT-1B ("T" Type Spare Tires for Temporary Use on Passenger Vehicles) of the Tire and Rim Association Year Book,
 - (b) the designation "T" is molded into the tire's sidewall as part of the size designation, and,
 - (c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed is 81 MPH or a "M" rating;
- (6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:
 - (a) The size designation molded on the tire's sidewall is listed in the ST sections of the Tire and Rim Association Year Book,

Appendix D

(b) the designation “ST” is molded into the tire’s sidewall as part of the size designation,

(c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is “For Trailer Service Only” or “For Trailer Use Only”,

(d) the load index molded on the tire’s sidewall meets or exceeds those load indexes listed in the Tire and Rim Association Year Book for the relevant ST tire size, and

(e) either

(i) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed does not exceed 81 MPH or an “M” rating; or

(ii) the tire’s speed rating molded on the sidewall is 87 MPH or an “N” rating, and in either case the tire’s maximum pressure and maximum load limit are molded on the sidewall and either

(1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book; or

(2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book, the

67a

Appendix D

maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) The size designation and load index combination molded on the tire's sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the Tire and Rim Association Year Book,

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is "Not For Highway Service" or "Not for Highway Use",

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the Tire and Rim Association Year Book, and the rated speed does not exceed 55 MPH or a "G" rating, and

(d) the tire features a recognizable off-road tread design.

The products covered by the orders are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05,

Appendix D

and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

Amendment to the AD Final Determination

On June 11, 2015, the Department issued its affirmative final determination in the AD investigation.⁵ On June 22, 2015, Petitioner⁶ submitted timely ministerial error allegations. On June 29, 2015, the GITI companies and the Sailun Group Co., Ltd. (Sailun Group), respondents in the AD investigation, submitted timely rebuttal comments to the Petitioner's allegations.⁷ No other interested party submitted ministerial error allegations or rebutted Petitioner's submission.

5. *See AD Final Determination.*

6. Collectively, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC.

7. *See* Letter from the GITI companies, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Reply to Ministerial Error Comments--Giti Tire Global Trading Pte. Ltd.," June 29, 2015; *see also* Letter from the Sailun Group, "Sailun's Reply to Petitioner's Ministerial Error Allegations in the Antidumping Duty Investigation on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China," June 29, 2015.

Appendix D

After analyzing the comments and rebuttals received, we determine, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that we made ministerial errors in our calculations for the *AD Final Determination* with respect to the GITI companies.⁸ This amended final AD determination corrects these errors and revises the weighted-average margin rate for the GITI companies. Because the margin rate for the separate rate companies is based on the rates for the GITI companies and the Sailun Group, and the rate for the GITI companies changed due to the aforementioned ministerial errors, we have revised the calculation for the weighted-average margin rate for the separate rate companies in this amended final AD determination.⁹ The amended weighted-average margin rates are listed in the table below. The amended weighted-average margin rates provided for all exporter/producer combinations listed in the table are adjusted, where appropriate, for export subsidies and estimated domestic subsidy pass-through.

Amendment to the CVD Final Determination

On June 11, 2015, the Department issued its affirmative final determination in the CVD investigation.¹⁰ On June

8. For a detailed discussion of all alleged ministerial errors, as well as the Department's analysis, *See* the memorandum, "Amended Final Determination of the Antidumping Duty Investigation: Allegations of Ministerial Errors," dated concurrently with this Notice (AD Ministerial Error Memorandum).

9. *See* AD Ministerial Error Memorandum.

10. *See* CVD *Final Determination*.

Appendix D

17, 2015, Petitioner and GITI Tire (Fujian) Co., Ltd. (GITI Fujian), a respondent in the CVD investigation, submitted timely ministerial error allegations and requested that the Department correct the alleged ministerial errors in the subsidy rate calculations.¹¹ On June 22, 2015, Petitioner, GITI Fujian, and Yongsheng submitted timely rebuttal comments to these ministerial error allegations.¹² No other interested party submitted ministerial error allegations or rebuttals to Petitioner's or GITI Fujian's submissions.

After analyzing the comments and rebuttals received, we determined, in accordance with section 705(e) of the Act and 19 CFR 351.224(e), that we made ministerial errors in certain calculations for the *CVD Final Determination*

11. See Letter from Petitioner, "Countervailing Duty Investigation on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (C-570-017)--Petitioner's Ministerial Error Comments," June 17, 2015 (Petitioner's Ministerial Error Comments); Letter from GITI Fujian, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Ministerial Error Comments," June 17, 2015 (GITI Fujian Ministerial Error Comments).

12. See Letter from Petitioner, "Countervailing Duty Investigation on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (C-570-017)--Petitioner's Reply to GITI Tire's Ministerial Error Comments," June 22, 2015; Letter from GITI Fujian, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Ministerial Error Comments--Reply," June 22, 2015; Letter from Yongsheng, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Ministerial Error Reply of Shandong Yongsheng Rubber Group Co., Ltd.," June 22, 2015.

Appendix D

with respect to Yongsheng. This amended final CVD determination corrects these errors and revises the *ad valorem* subsidy rate for Yongsheng. The amended estimated *ad valorem* subsidy rate for Yongsheng is 116.73 percent.

Antidumping Duty Order

As stated above, on August 3, 2015, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination in its investigation, in which it found that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of passenger tires from the PRC, and that critical circumstances do not exist with respect to imports of subject merchandise from the PRC that are subject to the Department's affirmative critical circumstances finding.¹³ Because the ITC determined that imports of passenger tires from the PRC are materially injuring a U.S. industry, unliquidated entries of such merchandise from the PRC, entered or withdrawn from warehouse, for consumption are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the

13. *See ITC Determination.*

Appendix D

merchandise, for all relevant entries of passenger tires from the PRC. These antidumping duties will be assessed on unliquidated entries of passenger tires from the PRC entered, or withdrawn from warehouse, for consumption on or after January 27, 2015, the date of publication of the *AD Preliminary Determination*,¹⁴ but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Continuation of Suspension of Liquidation (AD)

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct CBP to continue to suspend liquidation of all appropriate entries of passenger tires from the PRC as described in the "Scope of the Orders" section, which were entered, or withdrawn from warehouse, for consumption on or after January 27, 2015, the date of publication in the **Federal Register** of the notice of an affirmative preliminary determination that passenger tires are being, or are likely to be, sold in the United States at LTFV. Further, consistent with our practice, where the product from the PRC under investigation is also subject to a concurrent CVD investigation, the Department will

14. See *Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015) (*AD Preliminary Determination*).

Appendix D

instruct CBP to require a cash deposit¹⁵ equal to the weighted-average amount by which the normal value exceeds U.S. price, adjusted where appropriate for export subsidies and estimated domestic subsidy pass-through.¹⁶ The cash deposit rates are as follows: (1) For each exporter/producer combination listed in the table below, the cash deposit rate will be equal to the dumping margin listed for that exporter/producer combination in the table, adjusted as appropriate for export subsidies and estimated domestic subsidy pass-through; (2) for all other combinations of PRC exporters/producers of the merchandise under consideration, the cash deposit rate will be equal to the dumping margin established for the PRC-wide entity, adjusted as appropriate for export subsidies and estimated subsidy pass-through; and (3) for all non-PRC exporters of the merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be equal to the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension of liquidation instructions will remain in effect until further notice.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally

15. See *Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

16. See sections 772(c)(1)(C) and 777A(f) of the Act.

Appendix D

deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins indicated below, adjusted, where appropriate, for export subsidies and estimated domestic subsidy pass-through, as discussed above.¹⁷

Provisional Measures (AD)

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination in an AD investigation may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four month period to no more than six months. At the request of the GITI companies, who account for a significant proportion of passenger tires from the PRC, we extended the four-month period to no more than six months in this case.¹⁸ The Department published the preliminary

17. With respect to the final affirmative countervailing duty determination in the companion investigation, because the provisional measures period has expired, the Department will only order the resumption of the suspension of liquidation, and require cash deposits for countervailing duties equal to the final subsidy rates, upon issuance of a final affirmative injury determination by the ITC. As a result, the Department will make an adjustment to AD cash deposits, where appropriate, for export subsidies and estimated domestic subsidy pass-through as of the date of publication of the ITC's final affirmative injury determination.

18. *See Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary*

Appendix D

determination in the AD investigation on January 27, 2015. Therefore, the six-month period beginning on the date of publication of the preliminary determination in the AD investigation ended on July 26, 2015. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of passenger vehicle tires from the PRC, entered, or withdrawn from warehouse, for consumption on or after July 26, 2015, the date the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows.¹⁹

Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination, 80 FR 4250 at 4253 (January 27, 2015) (*AD Preliminary Determination*).

19. As explained in the *AD Final Determination*, we will adjust cash deposit rates by the amount of export subsidies and domestic subsidy pass-throughs, where appropriate. *See AD Final Determination*, 80 FR at 34897. As a result of the adjustments for export subsidies and domestic subsidy pass-throughs, the GITI companies' cash deposit rate will be 15.31 percent; the Sailun Group's cash deposit rate will be 0.00 percent; Cooper Tire &

Appendix D

Exporter(s)	Producer(s)	Weighted- (percent)
Giti Tire Global Trading Pte. Ltd., Giti Tire (USA) Ltd., Giti Radial Tire (Anhui) Company Ltd., Giti Tire (Fujian) Company Ltd., Giti Tire (Hualin) Company Ltd., (Collectively, the GITI Companies)	Giti Radial Tire (Anhui) Company Ltd., Giti Tire (Fujian) Company Ltd., Giti Tire (Hualin) Company Ltd	30.74

Rubber Company's, Cooper (Kunshan) Tire Co., Ltd.'s, and Cooper Chengshan (Shandong) Tire Co., Ltd's. (collectively, Cooper) cash deposit rate will be 11.12 percent; the other separate rate entities' (besides Cooper) cash deposit rate will be 8.72 percent; and the PRC-wide entity's cash deposit rate will be 76.46 percent. *See also CVD Final Determination* and Memorandum to the File, "Certain Passenger Vehicle and Light Truck from the People's Republic of China: Double Remedies Final Calculation Memorandum" (June 11, 2015).

77a

Appendix D

Exporter(s)	Producer(s)	Weighted-(percent)
Sailun Group Co., Ltd. (aka Sailun Jinyu Group Co., Ltd.), Sailun Tire International Corp., Shandong Jinyu Industrial Co., Ltd., Jinyu International Holding Co., Limited, Seatex International Inc., Dynamic Tire Corp., Husky Tire Corp., Seatex PTE. Ltd., (Collectively, Sailun Group)	Sailun Group Co., Ltd. (aka Sailun Jinyu Group Co., Ltd.), Shandong Jinyu Industrial Co., Ltd	14.35
Cooper Tire & Rubber Company	Cooper Chengshan (Shandong) Tire Co., Ltd., Cooper (Kunshan) Tire Co., Ltd	25.84

Appendix D

Exporter(s)	Producer(s)	Weighted- (percent)
Cooper Chengshan (Shandong) Tire Co., Ltd	Cooper Chengshan (Shandong) Tire Co., Ltd	25.84
Cooper (Kunshan) Tire Co., Ltd	Cooper (Kunshan) Tire Co., Ltd	25.84
Best Choice International Trade Co., Limited	Qingdao Sentury Tire Co., Ltd., Shandong Haohua Tire Co., Ltd., Beijing Capital Tire Co., Ltd	25.84
Bridgestone (Wuxi) Tire Co., Ltd	Bridgestone (Wuxi) Tire Co., Ltd	25.84
Bridgestone Corporation	Bridgestone (Wuxi) Tire Co., Ltd	25.84
Cheng Shin Tire & Rubber (China) Co., Ltd	Cheng Shin Tire & Rubber (China) Co., Ltd., Cheng Shin Tire & Rubber (Chongqing) Co., Ltd	25.84

79a

Appendix D

Exporter(s)	Producer(s)	Weighted- (percent)
Crown International Corporation	Shandong Guofeng Rubber Plastics Co., Ltd., Shandong Haohua Tire Co., Ltd., Shandong Jinyu Industrial Co., Ltd., Doublestar-Dongfeng Tyre Co., Ltd., Shengtai Group Co., Ltd., Qingdao Doublestar Tire Industrial Co., Ltd., Shandong Yongtai Chemical Co., Ltd	25.84
Goodyear Dalian Tire Company Limited	Goodyear Dalian Tire Company Limited	25.84
Guangzhou Pearl River Rubber Tyre Ltd	Guangzhou Pearl River Rubber Tyre Ltd	25.84
Hankook Tire China Co., Ltd	Hankook Tire China Co., Ltd	25.84
Hebei Tianrui Rubber Co., Ltd	Hebei Tianrui Rubber Co., Ltd	25.84
Highpoint Trading, Ltd	Federal Tire (Jiangxi) Ltd	25.84

Appendix D

Exporter(s)	Producer(s)	Weighted- (percent)
Hong Kong Tiancheng Investment & Trading Co., Limited	Shandong Linglong Tyre Co., Ltd	25.84
Hong Kong Tri- Ace Tire Co., Limited.	Shandong Yongtai Chemical Co., Ltd., Doublestar-Dongfeng Tyre Co., Ltd	25.84
Hwa Fong Rubber (Hong Kong) Ltd	Hwa Fong Rubber (Suzhou) Co., Ltd.	25.84
Jiangsu Hankook Tire Co., Ltd	Jiangsu Hankook Tire Co., Ltd	25.84
Kenda Rubber (China) Co., Ltd	Kenda Rubber (China) Co., Ltd	25.84
Kumho Tire Co., Inc	Kumho Tire (Tianjin) Co., Inc., Nanjing Kumho Tire Co., Ltd., Kumho Tire (Changchun) Co., Inc	25.84
Mayrun Tyre (Hong Kong) Limited	South China Tire & Rubber Co., Ltd., Shandong Haohua Tire Co., Ltd	25.84

81a

Appendix D

Exporter(s)	Producer(s)	Weighted- (percent)
Nankang (Zhangjiagang Free Trade Zone) Rubber Industrial Co., Ltd	Nankang (Zhangjiagang Free Trade Zone) Rubber Industrial Co., Ltd	25.84
Pirelli Tyre Co., Ltd	Pirelli Tyre Co., Ltd	25.84
Qingdao Crown Chemical Co., Ltd	Shandong Guofeng Rubber Plastics Co., Ltd., Shandong Haohua Tire Co., Ltd., Shandong Jinyu Industrial Co., Ltd., Doublestar- Dongfeng Tyre Co., Ltd	25.84
Qingdao Free Trade Zone Full-World International Trading Co., Ltd	Shandong Zhentai Group Co., Ltd., Longkou Xinglong Tyre Co., Ltd., Hebei Tianrui Rubber Co., Ltd	25.84

Appendix D

Exporter(s)	Producer(s)	Weighted-(percent)
Qingdao Fullrun Tyre Corp. Ltd	Fullrun Tyre Tech Corp., Ltd, Shengtai Group Co., Ltd., Shandong Zhongyi Rubber Co., Ltd., Shandong Guofeng Rubber Plastics Co, Ltd, Deruibao Tire Co., Ltd., Shandong New Continent Tire Co., Ltd, Shandong Fengyuan Tyre Manufacturing Co., Ltd, Sichuan Tyre & Rubber Co., Ltd, Qingdao Futaian Tyre Teck. Co., Ltd., Good Friend Tyre Co., Ltd., Shandong Hengyu Science & Technonology Co., Ltd., Shandong Longyue Rubber Co., Ltd., Shouguang Firemax Tyre Co., Ltd, Beijing Capital Tire Co., Ltd., Shandong Wanda Boto Tyre Co., Ltd, Zhaoqing Junhong Co., Ltd, Shandong Huasheng Rubber Co., Ltd, Shandong Haohua Tire Co., Ltd., Shandong Province Sanli Tire Manufactured Co., Ltd	25.84

Appendix D

Exporter(s)	Producer(s)	Weighted- (percent)
Qingdao Fullrun Tyre Tech Corp., Ltd	Qingdao Fullrun Tyre Tech Corp., Ltd.	25.84
Qingdao Honghua Tyre Factory	Qingdao Honghua Tyre Factory	25.84
Qingdao Nama Industrial Co., Ltd	Shandong Guofeng Rubber Plastics Co., Ltd., Shandong Hengyu Science & Technology Co., Ltd., Shandong Longyue Rubber Co., Ltd., Shandong Haohua Tire Co., Ltd., Shouguang Firemax Tyre Co., Ltd., Shandong Zhongyi Rubber Co., Ltd., Shandong Yonking Rubber Co., Ltd., Shandong Hongsheng Rubber Technology Co., Ltd	25.84
Qingdao Nexen Tire Corporation	Qingdao Nexen Tire Corporation	25.84
Qingdao Odyking Tyre Co., Ltd	Doublestar-Dongfeng Tyre Co., Ltd., Shandong Fengyuan Tire Manufacturing Co., Ltd., Shouguang Firemax Tyre Co., Ltd	25.84

Appendix D

Exporter(s)	Producer(s)	Weighted- (percent)
Qingdao Qianzhen Tyre Co., Ltd	Qingdao Qianzhen Tyre Co., Ltd	25.84
Qingdao Qihang Tyre Co., Ltd	Qingdao Qihang Tyre Co., Ltd	25.84
Qingdao Qizhou Rubber Co., Ltd	Qingdao Qizhou Rubber Co., Ltd	25.84
Qingdao Sentury Tire Co., Ltd	Qingdao Sentury Tire Co., Ltd	25.84
Shandong Anchi Tyres Co., Ltd	Shandong Anchi Tyres Co., Ltd	25.84
Shandong Changfeng Tyres Co., Ltd	Shandong Changfeng Tyres Co., Ltd	25.84
Shandong Duratti Rubber Corporation Co., Ltd	Shandong Duratti Rubber Corporation Co., Ltd	25.84
Shandong Guofeng Rubber Plastics Co., Ltd	Shandong Guofeng Rubber Plastics Co., Ltd	25.84
Shandong Haohua Tire Co., Ltd	Shandong Haohua Tire Co., Ltd	25.84

85a

Appendix D

Exporter(s)	Producer(s)	Weighted- (percent)
Shandong Haolong Rubber Tire Co., Ltd	Shandong Haolong Rubber Tire Co., Ltd	25.84
Shandong Hawk International Rubber Industry Co., Ltd	Shandong Hawk International Rubber Industry Co., Ltd	25.84
Shandong Hengyu Science & Technology Co., Ltd	Shandong Hengyu Science & Technology Co., Ltd	25.84
Shandong Huitong Tyre Co., Ltd	Shandong Huitong Tyre Co., Ltd., Laiwu Sunshine Tyre Co., Ltd	25.84
Shandong Linglong Tyre Co., Ltd	Shandong Linglong Tyre Co., Ltd	25.84
Shandong Longyue Rubber Co., Ltd	Shandong Longyue Rubber Co., Ltd	25.84
Shandong New Continent Tire Co., Ltd	Shandong New Continent Tire Co., Ltd	25.84

Appendix D

Exporter(s)	Producer(s)	Weighted- (percent)
Shandong Province Sanli Tire Manufactured Co., Ltd	Shandong Province Sanli Tire Manufactured Co., Ltd	25.84
Shandong Shuangwang Rubber Co., Ltd	Shandong Shuangwang Rubber Co., Ltd	25.84
Shandong Wanda Boto Tyre Co., Ltd	Shandong Wanda Boto Tyre Co., Ltd	25.84
Shandong Yongtai Chemical Co., Ltd	Shandong Yongtai Chemical Co., Ltd	25.84
Shandong Zhongyi Rubber Co., Ltd	Shandong Zhongyi Rubber Co., Ltd	25.84
Shengtai Group Co., Ltd	Shengtai Group Co., Ltd., Shandong Shengshitailai Rubber Technology Co., Ltd	25.84
Shifeng Juxing Tire Co., Ltd	Shifeng Juxing Tire Co., Ltd	25.84
Shouguang Firemax Tyre Co., Ltd	Shouguang Firemax Tyre Co., Ltd	25.84

87a

Appendix D

Exporter(s)	Producer(s)	Weighted- (percent)
Southeast Mariner International Co., Ltd	Dongying Zhongyi Rubber Co., Ltd., Shandong Haohua Tire Co., Ltd	25.84
Techking Tires Limited	Shandong Longyue Rubber Co., Ltd	25.84
Toyo Tire (Zhangjiagang) Co., Ltd	Toyo Tire (Zhangjiagang) Co., Ltd	25.84
Triangle Tyre Co., Ltd	Triangle Tyre Co., Ltd	25.84
Tyrechamp Group Co., Limited	Shandong Haohua Tire Co., Ltd., Sichuan Tyre & Rubber Co., Ltd., Shandong Anchi Tyres Co., Ltd., Beijing Capital Tire Co., Ltd., Shandong Wanda Boto Tyre Co., Ltd., Shandong Wosen Rubber Co., Ltd., Shandong Zhentai Group Co., Ltd., Shandong Yonking Rubber Co., Ltd., Qingdao Doublestar Tire Industrial Co., Ltd., South China Tire & Rubber Co., Ltd., Anhui Heding Tire Technology Co., Ltd	25.84

Appendix D

Exporter(s)	Producer(s)	Weighted-(percent)
Weihai Ping'an Tyre Co., Ltd	Weihai Ping'an Tyre Co., Ltd	25.84
Weihai Zhongwei Rubber Co., Ltd	Weihai Zhongwei Rubber Co., Ltd	25.84
Wendeng Sanfeng Tyre Co., Ltd	Wendeng Sanfeng Tyre Co., Ltd	25.84
Winrun Tyre Co., Ltd	Shaanxi Yanchang Petroleum Group Rubber Co. Ltd	25.84
Zenith Holdings (HK) Limited	Shandong Linglong Tyre Co., Ltd	25.84
Zhaoqing Junhong Co., Ltd	Zhaoqing Junhong Co., Ltd	25.84
PRC-wide Entity*		87.99

*The PRC-wide entity includes, among other companies, Yongsheng, a mandatory respondent in this investigation that did not demonstrate that it is entitled to a separate rate. Accordingly, we consider Yongsheng to be part of the PRC-wide Entity.

Critical Circumstances (AD)

With regard to the ITC's negative critical circumstances determination on imports of passenger tires from the PRC, we will instruct CBP to lift suspension and to

Appendix D

refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after October 29, 2014 (*i.e.*, 90 days prior to the date of publication of the *AD Preliminary Determination*), but before January 27, 2015, (*i.e.*, the date of publication of the *AD Preliminary Determination*).

Countervailing Duty Order

As stated above, on August 3, 2015, in accordance with section 705(d) of the Act, the ITC notified the Department of its final determination in this investigation, in which it found that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of imports of passenger tires from the PRC, and that critical circumstances do not exist with respect to imports of subject merchandise from the PRC that are subject to the Department's affirmative critical circumstances finding.²⁰ Therefore, in accordance with sections 705(c)(2) and 706(a) of the Act, we are publishing this countervailing duty order.

In accordance with section 706(a) of the Act, the Department will direct CBP to assess, upon further instruction by the Department, countervailing duties on unliquidated entries of passenger tires from the PRC entered, or withdrawn from warehouse, for consumption on or after December 1, 2014, the date of publication of the

20. See ITC Notification.

Appendix D

Federal Register,²¹ and before March 31, 2015, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of passenger tires from the PRC made on or after March 31, 2015, and prior to the date of publication of the ITC's final determination in the **Federal Register**, are not liable for the assessment of countervailing duties, due to the Department's discontinuation, effective March 31, 2015, of the suspension of liquidation.

Provisional Measures (CVD)

In accordance with Section 703(d) of the Act, the provisional measures period for the CVD investigation ended on March 31, 2015 and CBP was instructed to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of passenger vehicle tires from the PRC, entered, or withdrawn from warehouse, for consumption on or after March 31, 2015, the date the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**

21. *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Affirmative Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 79 FR 71093 (December 1, 2014) (*CVD Preliminary Determination*).

*Appendix D***Suspension of Liquidation (CVD)**

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute suspension of liquidation, effective on the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further instruction by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. The Department will also direct CBP to require a cash deposit for each entry of subject merchandise in an amount equal to the net countervailable subsidy rates listed below. The all-others rate applies to all producers and exporters of subject merchandise not specifically listed.

Estimated Countervailing Duty Cash Deposit Rates

Company	Cash deposit rate (percent)
GITI Tire (Fujian) Co., Ltd. and certain cross-owned companies ²²	36.79

22. GITI Tire (Fujian) Co., Ltd., and its cross-owned affiliated companies GITI Tire (China) Investment Company Ltd., GITI Radial Tire (Anhui) Company Ltd., GITI Tire (Hualin) Company Ltd., GITI Steel Cord (Hubei) Company Ltd., Anhui Prime Cord Fabrics Company Ltd., GITI Tire Corporation, GITI Tire (Anhui) Company Ltd., GITI Greatwall Tire (Yinchuan) Company Ltd., GITI Steel Cord (Anhui) Company Ltd., Anhui Prime Cord Weaving Company Ltd., and Anhui Prime Cord Twisting Company Ltd.

Appendix D

Company	Cash deposit rate (percent)
Cooper Kunshan Tire Co., Ltd and certain cross-owned companies ²³	20.73
Shandong Yongsheng Rubber Group Co., Ltd	116.33
All-Others	30.61

Critical Circumstances (CVD)

With regard to the ITC's negative critical circumstances determination on imports of passenger tires from the PRC, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 2, 2014 (*i.e.*, 90 days prior to the date of the publication of the *CVD Preliminary Determination*), but before December 1, 2014 (*i.e.*, the date of publication of the *CVD Preliminary Determination*).

Notifications to Interested Parties

This notice constitutes the AD and CVD orders with respect to passenger tires from the PRC pursuant to sections 736(a) and 706(a) of the Act. Interested parties can find an updated list of orders currently in effect by either visiting <http://enforcement.trade.gov/stats/iastats1>.

23. Cooper Kunshan Tire Co., Ltd., and its cross-owned affiliated company, Cooper Chengshan (Shandong) Tire Co., Ltd.

Appendix D

html or by contacting the Department's Central Records Unit, Room B8024 of the main Commerce Building.

These orders and the amended *AD Final Determination* and amended *CVD Final Determination* are published in accordance with sections 705(e), 706(a), 735(e), 736(a), and 777(i) of the Act, and 19 CFR 351.211(b) and 351.224(e).

Dated: August 4, 2015.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix D

82 FR 48051

Vol. 82, No. 198, Monday, October 16, 2017

Initiation of Antidumping and Countervailing Duty
Administrative Reviews

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify the Department within 30 days of publication of this notice in the Federal Register. All submissions must be filed electronically at <http://access.trade.gov> in accordance with 19 CFR 351.303.¹ Such

1. See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

Appendix D

submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation Federal Register notice. Comments regarding the CBP data and respondent selection should be submitted seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments five days after the deadline for the initial comments.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be "collapsed" (*i.e.*, treated as a single entity for purposes of

Appendix D

calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

*Appendix D***Deadline for Withdrawal of Request for Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

Appendix D

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both de jure and de facto government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at <http://enforcement.trade.gov/nme/nme-sep-rate.html> on the date of publication of this Federal Register notice. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this Federal Register notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Appendix D

Entities that currently do not have a separate rate from a completed segment of the proceeding² should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,³ should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at <http://enforcement.trade.gov/nme/nme-sep-rate.html> on the date of publication of this Federal Register notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 30 calendar days of publication of this Federal Register notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and

2. Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.*, an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

3. Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

Appendix D

export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than August 31, 2018.

	Period to be reviewed
Antidumping Duty Proceedings India:	
Corrosion-Resistant Steel Products ⁴ A-533-863	1/4/16-6/30/17

4. In the notice of initiation for July anniversary cases, published in the Federal Register on September 13, 2017 (82 FR 42974), the Department incorrectly identified “Netherland, B.V.” and “Uttam Galva Steels” as two separate companies when it should have been listed as a single company: Uttam Galva Steels, Netherlands, B.V. The Department hereby corrects that initiation notice and is publishing the names of all companies for which requests for review were received for the POR.

101a

Appendix D

	Period to be reviewed
Atlantis International Services Company Ltd	
JSW Coated Products Limited	
JSW Steel Ltd	
Uttam Galva Steels (BVI) Limited	
Uttam Galva Steels Limited	
Uttam Galva Steels, Netherlands, B.V	
Uttam Value Steels Limited	
Malaysia:	
Polyethylene Retail Carrier Bags A-557-813	8/1/16-7/31/17
Euro SME Sdn Bhd	
Mexico:	
Light-Walled Rectangular Pipe and Tube A-201-836	8/1/16-7/31/17
Maquilacero S.A. de C.V	
Perfiles y Herrerajes LM, S.A. de C.V	
Productos Laminados de Monterrey S.A. de C.V	
Regiomontana de Perfiles y Tubos S.A. de C.V	
Republic of Korea:	

102a

Appendix D

	Period
Large Power Transformers A-580-867	to be reviewed 8/1/16-7/31/17
Hyundai Electric & Energy Systems Co., Ltd	
Hyundai Heavy Industries Co., Ltd	
ILJIN	
Iijin Electric Co., Ltd	
LSIS Co., Ltd	
Hyosung Corporation	
Socialist Republic of Vietnam:	
Certain Frozen Fish Fillets A-552-801	8/1/16-7/31/17
An Giang Agriculture and Foods Import-Export Joint Stock Company (also known as Afiex, An Giang Agriculture and Foods Import-Export Joint Stock Company, An Giang Agriculture and Food Import-Export Company, or An Giang Agriculture and Foods Import and Export Company)	
An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish or AnGiang Fisheries Import and Export)	
An My Fish Joint Stock Company (also known as Anmyfish or Anmyfishco)	

Appendix D

	Period to be reviewed
An Phat Import-Export Seafood Co. Ltd. (also known as An Phat Seafood Co. Ltd.)	
An Phu Seafood Corporation (also known as ASEAFood or An Phu Seafood Corp.) Anvifish Joint Stock Company (also known as Anvifish or Anvifish Co., Ltd.)	
Asia Commerce Fisheries Joint Stock Company (also known as Acomfish JSC or Acomfish)	
Asia Pangasius Company Limited (also known as ASIA)	
Basa Joint Stock Company (BASACO)	
Ben Tre Aquaproduct Import and Export Joint Stock Company (also known as Bentre Aquaproduct or Aquatex Bentre)	
Bentre Forestry and Aquaproduct Import-Export Joint Stock Company (also known as Bentre Forestry and Aquaproduct Import and Export Joint Stock Company or Ben Tre Forestry and Aquaproduct Import-Export Company or Ben Tre Forestry Aquaproduct Import-Export Company or Ben Tre Frozen Aquaproduct Export Company or Faquimex)	

Appendix D

	Period to be reviewed
Bien Dong Seafood Company Ltd. (also known as Bien Dong, Bien Dong Seafood, Bien Dong Seafood Co., Ltd., or Biendong Seafood Limited Liability Company)	
Binh An Seafood Joint Stock Company (also known as Binh An or Binh An Seafood Joint Stock Co.)	
Binh Dinh Import Export Company (also known as Binh Dinh)	
Cadovimex II Seafood Import- Export and Processing Joint Stock Company (also known as Cadovimex II or Cadovimex II Seafood Import- Export)	
Cafatex Corporation (also known as Cafatex)	
Can Tho Animal Fishery Products Processing Export Enterprise (also known as Cafatex)	
Cantho Import-Export Seafood Joint Stock Company (also known as CASEAMEX, Can Tho Import- Export Seafood Joint Stock Company, Cantho Import-Export Joint Stock Company, or Can Tho Import-Export Joint Stock Company)	

105a

Appendix D

Period
to be reviewed

C.P. Vietnam Corporation

Cuu Long Fish Import-Export
Corporation (also known as CL
Panga Fish)

Cuu Long Fish Joint Stock
Company (also known as CL-Fish
or CL-Fish Corp.)

Da Nang Seaproducts Import-
Export Corporation (also known as
Da Nang or Da Nang Seaproducts
Import/Export Corp.)

Dai Thanh Seafoods Company
Limited (also known as DATHACO
or Dai Thanh Seafoods or Dai
Thanh Seafoods Co., Ltd.)

East Sea Seafoods LLC (also
known as ESS LLC, ESS, ESS
JVC, East Sea Seafoods Limited
Liability Company, East Sea
Seafoods Joint Venture Co., Ltd.)

Europe Joint Stock Company (also
known as Europe JSC)

Fatfish Company Limited
(also known as FATIFISH or
FATIFISHCO)

Go Dang An Hiep One Member
Limited Company

Appendix D

	Period to be reviewed
Go Dang Ben Tre One Member Limited Liability Company	
GODACO Seafood Joint Stock Company (also known as GODACO or GODACO Seafood J.S.C. or GODACO Seafood)	
Golden Quality Seafood Corporation (also known Golden Quality, GoldenQuality, or GoldenQuality Seafood Corporation)	
Green Farms Seafood Joint Stock Company (also know as Green Farms, GreenFarm SeaFoods Joint Stock Company or Green Farms Seafoods Joint Stock Company or Green Farms Seafood JSC)	
Hai Huong Seafood Joint Stock Company (also known as HHFish, HH Fish, or Hai Houg Seafood)	
Hiep Thanh Seafood Joint Stock Company (also known as Hiep Thanh or Hiep Thanh Seafood Joint Stock Co.)	
Hoa Phat Seafood Import-Export and Processing J.S.C. (also known as HOPAFISH or Hoa Phat Seafood Import-Export and Processing Joint Stock Company)	

107a

Appendix D

Period
to be reviewed

Hoang Long Seafood Processing
Company Limited (also known
as HLS, Hoang Long Seafood, or
Hoang Long Seafood Processing
Co.,Ltd.)

Hung Vuong--Mien Tay
Aquaculture Corporation

Hung Vuong--Sa Dec Co., Ltd

Hung Vuong--Vinh Long Co., Ltd

Hung Vuong Ben Tre Seafood
Processing Company Limited
(also known as HVBT Seafood
Processing)

Hung Vuong Corporation

Hung Vuong Joint Stock Company

Hung Vuong Mascato Company
Limited

Hung Vuong Seafood Joint Stock
Company

International Development &
Investment Corporation (also
known as IDI)

Lian Heng Investment Co.,
Ltd. (also known as Lien Heng
Investment or Lian Heng)
Lian Heng Trading Co., Ltd. (also
known as Lian Heng or Lian Heng
Trading)

Appendix D

Period
to be reviewed

Nam Phuong Seafood Co., Ltd.
(also known as Nam Phuong or
NAFISHCO or Nam Phuong
Seafood or Nam PhuongSeafood
Company Ltd.)

Nam Viet Corporation (also known
as NAVICO)

Ngoc Ha Co., Ltd. Food Processing
and Trading (also known as Ngoc
Ha or Ngoc Ha Co., Ltd. Foods
Processing and Trading)

Nha Trang Seafoods, Inc. (also
known as Nha Trang Seafoods-F89,
Nha Trang Seafoods, or Nha Trang
Seaproduct Company)

NTACO Corporation (also known as
NTACO or NTACO Corp.)

NTSF Seafoods Joint Stock
Company (also known as NTSF or
NTSF Seafoods)

Quang Minh Seafood Company
Limited (also known as Quang
Minh, Quang Minh Seafood Co.,
Ltd., or Quang Minh Seafood Co.)

QVD Dong Thap Food Co., Ltd.
(also known as Dong Thap or QVD
DT)

Appendix D

	Period to be reviewed
QVD Food Company, Ltd. (also known as QVD or QVD Aquaculture)	
Saigon-Mekong Fishery Co., Ltd. (also known as SAMEFICO or Saigon Mekong Fishery Co., Ltd.)	
Seafood Joint Stock Company No. 4 Branch Dongtam Fisheries Processing Company (also known as DOTASEAFOODCO or Seafood Joint Stock Company No. 4-Branch Dong Tam Fisheries Processing Company)	
Southern Fishery Industries Company, Ltd. (also known as South Vina, South Vina Co., Ltd., or Southern Fisheries Industries Company, Ltd.)	
Sunrise Corporation	
TG Fishery Holdings Corporation (also known as TG)	
Thanh Hung Co., Ltd. (also known as Thanh Hung Frozen Seafood Processing Import Export Co., Ltd. or Thanh Hung)	
Thien Ma Seafood Co., Ltd. (also known as THIMACO or Thien Ma or Thien Ma Seafood Company, Ltd. or Thien Ma Seafoods Co., Ltd.)	

Appendix D

	Period to be reviewed
Thuan An Production Trading and Service Co., Ltd. (also known as TAFISHCO, Thuan An Production Trading and Services Co., Ltd., or Thuan An Production & Trading Service Co., Ltd.)	
Thuan Hung Co., Ltd. (also known as THUFICO)	
To Chau Joint Stock Company (also known as TOCHAU)	
Van Duc Food Export Joint Stock Company	
Van Duc Tien Giang Food Export Company	
Viet Hai Seafood Company Limited (also known as Viet Hai or Vietnam Fish-One Co., Ltd. or Viet Hai Seafood Co. or Fish One)	
Viet Phu Foods and Fish Corporation (also known as Vietphu, Viet Phu, Viet Phu Food and Fish Corporation, or Viet Phu Food & Fish Corporation)	
Viet Phu Foods & Fish Co., Ltd	
Vinh Hoan Corporation (also known as Vinh Hoan or Ving Hoan Co.)	

Appendix D

	Period to be reviewed
Vinh Long Import-Export Company (also known as Vinh Long or Imex Cuu Long or Vinh Long Import/Export Company)	
Vinh Quang Fisheries Corporation (also known as Vinh Quang, Vinh Quang Fisheries Joint Stock Company, or Vinh Quang Fisheries Co.,Ltd.)	
Socialist Republic of Vietnam:	
Welded Stainless Pressure Pipe ⁵ A-552-816	7/1/16-6/30/17
Taiwan:	
Certain Steel Nails ⁶ A-583-854 Basso Industry Corporation	7/1/16-6/30/17
The People's Republic of China:	
Certain Passenger Vehicle and Light Truck Tires A-570-016	8/1/16-7/31/17

5. In the initiation notice that published on September 13, 2017 (82 FR 42974) the Department inadvertently initiated a review of Welded Stainless Pressure Pipe from Socialist Republic of Vietnam for Mejonson Industrial Vietnam Co., Ltd. We did not intend to initiate a review of this company. This notice serves as a correction to the Initiation Notice.

6. The company listed above was misspelled in the initiation notice that published on September 13, 2017 (82 FR 42974). The correct spelling of the company name is listed in this notice.

Appendix D

	Period to be reviewed
Actyon Tyre Resources Co., Limited	
BC Tyre Group Limited	
Best Choice International Trade Co., Limited	
Chen Shin Tire & Rubber (China) Co., Ltd	
Cooper (Kunshan) Tire Co., Ltd	
Crown International Corporation	
Dynamic Tire Corp	
Federal Tire (Jiangxi), Ltd	
Hangzhou Yokohama Tire Co., Ltd	
Hankook Tire China Co., Ltd	
Hebei Tianrui Rubber Co., Ltd	
Highpoint Trading, Ltd	
Hong Kong Tiancheng Investment & Trading Co., Limited	
Hong Kong Tri-Ace Tire Co., Limited	
Hongtyre Goup Co	
Husky Tire Corp	
Hwa Fong Rubber (Hong Kong) Ltd	
Hwa Fong Rubber (Suzhou) Ltd	
Jiangsu Hankook Tire Co., Ltd	
Kenda Rubber (China) Co., Ltd	

Appendix D

	Period to be reviewed
Koryo International Industrial Limited	
Kumho Tire Co., Inc	
Mayrun Tyre (Hong Kong) Limited	
Qingdao Fullrun Tyre Corp. Ltd	
Qingdao Fullrun Tyre Tech Corp. Ltd	
Qingdao Nama Industrial Co., Ltd	
Qingdao Nexen Tire Corporation	
Qingdao Odyking Tyre Co., Ltd	
Qingdao Qianzhen Tyre Co., Ltd	
Qingdao Qihang Tyre Co., Ltd	
Qingdao Qizhou Rubber Co., Ltd	
Qingdao Sentury Tire Co., Ltd	
Sailun Jinyu Group (Hong Kong) Co., Limited	
Sailun Jinyu Group Co., Ltd	
Sailun Tire International Corp	
Seatex International Inc	
Seatex PTE. Ltd	
Shandong Hongsheng Rubber Co. Ltd	
Shandong Anchi Tyres Co., Ltd	
Shandong Changfeng Tyres Co., Ltd	

Appendix D

	Period to be reviewed
Shandong Duratti Rubber Corporation Co. Ltd	
Shandong Guofeng Rubber Plastics	
Shandong Guofeng Rubber Plastics Co., Ltd	
Shandong Haohua Tire Co., Ltd	
Shandong Haolang Rubber Tire Co., Ltd	
Shandong Haolong Rubber Co., Ltd	
Shandong Hengyu Science & Technology Co., Ltd	
Shandong Jinyu Industrial Co., Ltd	
Shandong Linglong Tyre Co., Ltd	
Shandong Longyue Rubber Co., Ltd	
Shandong New Continent Tire Co., Ltd	
Shandong Province Sanli Tire Manufactured Co., Ltd	
Shandong Shuangwang Rubber Co., Ltd	
Shandong Wanda Boto Tyre Co., Ltd	
Shandong Yongsheng Rubber Group Co., Ltd	
Shandong Zhongyi Rubber Co., Ltd	

115a

Appendix D

	Period to be reviewed
Shengtai Group Co., Ltd	
Shifeng Juxing Tire Co., Ltd	
Shouguang Firemax Tyre Co., Ltd	
Southeast Mariner International Co., Ltd	
The Yokohama Rubber Company, Ltd	
Toyo Tire (Zhangjiagang) Co., Ltd	
Tyrechamp Group Co., Limited	
Winrun Tyre Co., Ltd	
Zhaoqing Junhong Co., Ltd	
The People's Republic of China:	
Hydrofluorocarbon Blends and Components Thereof A-570-028	2/1/16-7/31/17
Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd	
Daikin Fluorochemicals (China) Co., Ltd	
Dongyang Weihua Refrigerants Co., Ltd	
Jinhua Yonghe Fluorochemical Co., Ltd	
Shandong Huaan New Material Co., Ltd	
Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd	

116a

Appendix D

	Period to be reviewed
T.T. International Co., Ltd	
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd	
Zhejiang Lantian Environmental Protection Fluoro Material Co. Ltd	
Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd	
Zhejiang Sanmei Chemical Industry Co. Ltd. (AKA Zhejiang Sanmei Chemical Ind. Co. Ltd.)	
Zhejiang Yonghe Refrigerant Co., Ltd	
The People's Republic of China:	
Certain Steel Nails A-570-909	8/1/16-7/31/17
Air It on Inc	
A-Jax Enterprises Ltd	
A-Jax International Co. Ltd	
Anhui Amigo Imp.& Exp. Co. Ltd	
Anhui Tea Imp. & Exp. Co. Ltd	
Anjing Caiqing Hardware Co., Ltd	
Astrotech Steels Pvt. Ltd	
Beijing Catic Industry Ltd	
Beijing Qin-Li Jeff Trading Co., Ltd	
Bodi Corporation	
Cana (Rizhou) Hardward Co. Ltd	

117a

Appendix D

Period
to be reviewed

Cangzhou Xinqiao Int'l Trade Co.
Ltd
Certified Products Taiwan Inc
Changzhou Kya Trading Co. Ltd
Chia Pao Metal Co. Ltd
China Dinghao Co. Ltd
China Staple Enterprise Co. Ltd
Chinapack Ningbo Imp. & Exp. Co.
Ltd
Chite Enterprise Co. Ltd
Crelux Int'l Co. Ltd
Daejin Steel Co. Ltd
Dezhou Hualude Hardware
Products Co. Ltd
Dingzhou Baota Metal Products Co.
Ltd
Dong E Fuqiang Metal Products
Co. Ltd
Ejen Brother Limited
Faithful Engineering Products Co.
Ltd
Fastening Care
Fastgrow International Co. Inc
Foshan Hosontool Development
Hardware Co. Ltd
Glori-Industry Hong Kong Inc

Appendix D

	Period to be reviewed
Guangdong Meite Mechanical Co. Ltd	
Hangzhou Spring Washer Co. Ltd	
Hebei Canzhou New Century Foreign Trade Co. Ltd	
Hongyi (HK) Hardware Products Co. Ltd	
Huaiyang County Yinfeng Plastic Factory	
Huanghua Yingjin Hardware Products	
Inmax Industries Sdn. Bhd	
Jade Shuttle Enterprise Co. Ltd	
Jiangsu General Science Technology Co. Ltd	
Jiangsu Huaiyin Guex Tools	
Jiaxing TSR Hardware Inc	
Jinhai Hardware Co. Ltd	
Jinsco International Corp	
Jinsheung Steel Corporation	
Koram Inc	
Korea Wire Co. Ltd	
Liaocheng Minghui Hardware Products	
Maanshan Lilai International Trade. Co. Ltd	

119a

Appendix D

Period
to be reviewed

Mingguang Abundant Hardware
Products Co. Ltd

Mingguang Ruifeng Hardware
Products Co. Ltd

Nailtech Co. Ltd

Nanjing Caiqing Hardware Co.
Ltd

Nanjing Nuochun Hardware Co.
Ltd

Nanjing Tianxingtong Electronic
Technology Co. Ltd

Nanjing Tianyu International Co.
Ltd

Nanjing Zeejoe International Trade

Ningbo Adv. Tools Co. Ltd

Ningbo Fine Hardware Production
Co. Ltd

Overseas Distribution Services Inc
Overseas International Steel
Industry

Paslode Fasteners Co. Ltd

Patek Tool Co. Ltd

President Industrial Inc

Promising Way (Hong Kong) Ltd

Qingda Jisco Co. Ltd

Qingdao D&L Hardware Co. Ltd

120a

Appendix D

Period
to be reviewed

Qingdao Gold Dragon Co. Ltd
Qingdao Hongyuan Nail Industry
Co. Ltd
Qingdao Meijialucky Industry and
Co
Qingdao MST Industry and
Commerce Co. Ltd
Qingdao Top Steel Industrial Co.
Ltd
Qingdao Uni-Trend International
Quzhou Monsoon Hardware Co. Ltd
Region Industries Co. Ltd
Region System Sdn. Bhd
Rise Time Industrial Ltd
Romp Coil Nail Industries Inc
R-Time Group Inc
SDC International Australia Pty.
Ltd
Shandong Liaocheng Minghua
Metal Pvt. Ltd
Shandong Oriental Cherry
Hardware Group Co. Ltd
Shandong Oriental Cherry
Hardware
Import & Export Co. Ltd

121a

Appendix D

Period
to be reviewed

Shandong Qingyun Hongyi
Hardware Co. Ltd

Shanghai Curvet Hardware
Products Co. Ltd

Shanghai Haoray International
Trade Co. Ltd

Shanghai Jade Shuttle Hardware
Tools Co. Ltd

Shanghai Pioneer Speakers Co. Ltd

Shanghai Seti Enterprise Int'l Co.
Ltd

Shanghai Yueda Nails Co. Ltd

Shanxi Easyfix Trade Co. Ltd

Shanxi Hairut Trade Co. Ltd

Shanxi Pioneer Hardware
Industrial Co. Ltd

Shanxi Tianli Industries Co. Ltd

Shaoxing Chengye Metal Producing
Co. Ltd

Shenzhen Xinjintal Hardware Co.
Ltd

S-Mart (Tianjin) Technology
Development Co. Ltd

Stanley Black & Decker Inc

Suntec Industries Co. Ltd

Suzhou Xingya Nail Co. Ltd

122a

Appendix D

Period
to be reviewed

Taizhou Dajiang Ind. Co. Ltd
The Stanley Works (Langfang)
Fastening Systems Co.,Ltd
Theps International
Tianji Hweschun Fasteners
Manufacturing Co. Ltd
Tianjin Baisheng Metal Products
Co. Ltd
Tianjin Bluekin Industries Ltd
Tianjin Coways Metal Products Co.
Ltd
Tianjin Dagang Jingang Nail
Factory
Tianjin Evangel Imp. & Exp. Co.
Ltd
Tianjin Fulida Supply Co. Ltd
Tianjin Huixingshangmao Co. Ltd
Tianjin Jin Xin Sheng Long Metal
Products Co. Ltd
Tianjin Jinchi Metal Products Co.
Ltd
Tianjin Jinghai County Hongli
Industry and Business Co. Ltd
Tianjin Jinghai Yicheng Metal Pvt

123a

Appendix D

Period
to be reviewed

Tianjin Jinlin Pharmaceutical
Factory

Tianjin Jinmao Imp. & Exp. Corp.
Ltd

Tianjin Lianda Group Co. Ltd

Tianjin Tianhua Environmental
Plastics Co. Ltd

Tianjin Universal Machinery Imp.
& Exp

Tianjin Yong Sheng Towel Mill

Tianjin Yongye Furniture Co. Ltd

Tianjin Zhonglian Metals Ware Co.
Ltd

Tianjin Zhonglian Times
Technology

Tianjin Zhongsheng Garment Co.
Ltd

Unicore Tianjin Fasteners Co. Ltd

Win Fasteners Manufactory
(Thailand) Co. Ltd

Wulian Zhanpeng Metals Co. Ltd

Xi'An Metals and Minerals Imp. &
Exp. Co. Ltd

Yongchang Metal Product Co

Yuyao Dingfeng Engineering Co.
Ltd

124a

Appendix D

	Period to be reviewed
Zhangjiagang Lianfeng Metals Products Co. Ltd	
Zhangjiagang Longxiang Industries Co. Ltd	
Zhaoqing Harvest Nails Co. Ltd	
Zhejiang Best Nail Industry Co. Ltd	
Zhejiang Jihengkang (JHK) Door Ind. Co. Ltd	
Zhejiang Yiwu Yongzhou Imp. & Exp. Co. Ltd	
Zhong Shan Daheng Metal Products Co. Ltd	
Zhong Shan Shen Neng Metals Products Co. Ltd	
Zhucheng Jinming Metal Products Co. Ltd	
Zhucheng Runfang Paper Co. Ltd	
The People's Republic of China: Polyethylene Retail Carrier Bags A-570-886	8/1/16-7/31/17
Crown Polyethylene Products (International) Ltd	

Appendix D

	Period to be reviewed
Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively Nozawa)	
High Den Enterprises Ltd Countervailing Duty Proceedings	
Italy:	
Certain Pasta ⁷ C-475-819	1/1/16-12/31/16
Antico Pastificio Morelli 1860 S.r.l	
Republic of Korea:	
Corrosion-Resistant Steel Products ⁸	11/6/15-12/31/16
C-580-879	
Dongkuk Steel Mill Co., Ltd	
Jeil Sanup Co., Ltd	
Seil Steel Co., Ltd	
Union Steel Manufacturing Co., Ltd	

7. In Initiation of Antidumping and Countervailing Duty Administrative Reviews, 82 FR 42074 (September 13, 2017), there was an error in the name of the company listed above. The company Antico Pastificio Morelli 1860 S.r.l. was incorrectly identified as Antico Pastificio Morelli 1870 S.r.l.. This notice serves as a correction to the initiation notice.

8. The companies listed below were either misspelled or inadvertently omitted in the initiation notice that published on September 13, 2017 (82 FR 42974). This notice serves as a correction to the initiation Notice.

126a

Appendix D

	Period
The People's Republic of China:	to be reviewed
Certain Passenger Vehicle and Light Truck Tires C-570-017	1/1/16-12/31/16
Best Industries Ltd	
BC Tyre Group Limited	
Cooper (Kunshan) Tire Co., Ltd	
Crown International Corporation	
Dongying Zhongyi Rubber Co., Ltd	
Hangzhou Yokohama Tire Co., Ltd	
Hankook Tire China Co., Ltd	
Hong Kong Tiancheng Investment & Trading Co., Limited	
Hongtyre Group Co	
Jiangsu Hankook Tire Co., Ltd	
Jiangsu Sanhe Aluminum	
Kenda Rubber (China) Co., Ltd	
Koryo International Industrial Limited	
Mayrun Tyre (Hong Kong) Limited	
Qingdao Jinhaoyang International Co., Ltd	
Qingdao Nama Industrial Co., Ltd	
Qingdao Odyking Tyre Co., Ltd	
Qingdao Sentury Tire Co., Ltd	

Appendix D

	Period to be reviewed
Roadclaw Tyre (Hong Kong) Limited	
Shandong Anchi Tyres Co., Ltd	
Shandong Changfeng Tyres Co., Ltd	
Shandong Changhong Rubber Technology Co., Ltd	
Shandong Guofeng Rubber Plastics Co., Ltd	
Shandong Haohua Tire Co., Ltd	
Shandong Haolong Rubber Co., Ltd	
Shandong Hengyu Science & Technology Co., Ltd	
Shandong Linglong Tyre Co., Ltd	
Shandong Longyue Rubber Co., Ltd	
Shandong New Continent Tire Co., Ltd	
Shandong Province Sanli Tire Shandong Province Sanli Tire Manufactured Co., Ltd	
Shandong Shuangwang Rubber Co., Ltd	
Shandong Wanda Boto Tyre Co., Ltd	
Shandong Yongsheng Rubber Group Co., Ltd	
Shandong Zhongyi Rubber Co., Ltd	

Appendix D

	Period to be reviewed
Shengtai Group Co., Ltd	
Shouguang Firemax Tyre Co., Ltd	
The Yokohama Rubber Company, Ltd	
Tyrechamp Group Co., Limited	
Winrun Tyre Co., Ltd	
Zhaoqing Junhong Co., Ltd	
Zhongce Rubber Group Company Limited	
Suspension Agreements	
None	
*48089 Duty Absorption Reviews	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

*Appendix D***Gap Period Liquidation**

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures “gap” period, of the order, if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in the Department’s regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (e.g., the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

The Department’s regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v)

Appendix D

evidence other than factual information described in (i)-(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the final rule, available at <http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.⁹ Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the Final Rule.¹⁰ The Department intends to

9. See section 782(b) of the Act.

10. See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings, 78 FR 42678 (July 17, 2013) (Final Rule); see also the frequently asked questions regarding the Final Rule, available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

Appendix D

reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under part 351 expires, or as otherwise specified by the Secretary. See 19 CFR 351.302. In general, an extension request will be considered untimely if it is filed after the time limit established under part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely.

Appendix D

This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i). [*48060]

Dated: October 10, 2017.

James Maeder,

Senior Director, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

133a

Appendix D

84 FR 28011

Vol. 84, No. 116, Monday, June 17, 2019

Notices

**COUNTERVAILING DUTY ORDER ON CERTAIN
PASSENGER VEHICLE AND LIGHT TRUCK
TIRES FROM THE PEOPLE'S REPUBLIC
OF CHINA: AMENDED FINAL RESULTS OF
COUNTERVAILING DUTY ADMINISTRATIVE
REVIEW; 2016**

AGENCY:

Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the countervailing duty administrative review of certain passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) to correct a ministerial error. The period of review (POR) is January 1, 2016 through December 31, 2016.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(b)(5), on

Appendix D

April 25, 2019, Commerce published its final results of the countervailing duty administrative review of passenger tires from China.¹ On May 6, 2019, Cooper (Kunshan) Tire Co., Ltd. (Cooper) submitted a request to correct a clerical error in the *Final Results*.² No other parties submitted ministerial error allegations or comments on Cooper's allegation.

Scope of the Order

The products covered by the order are certain passenger vehicle and light truck tires from the China. A full description of the scope of the order is contained in the Amended Final Decision Memorandum.³

Ministerial Errors

Section 751(h) of the Act and 19 CFR 351.224(f) define a "ministerial error" as an error in addition, subtraction,

1. See Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016, 84 FR 17382 (April 25, 2019) (Final Results).

2. See Cooper's Letter, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China/Allegation of A Ministerial Error," dated May 6, 2019 (Cooper Ministerial Comments).

3. See Memorandum "Administrative Review of the Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Decision Memorandum for Amended Final Results," dated concurrently and hereby adopted by this notice (Amended Final Decision Memorandum) for a full description of the scope of the order.

Appendix D

or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. As discussed in the Amended Final Decision Memorandum, Commerce finds that the error alleged by Cooper constitutes a ministerial error within the meaning of 19 CFR 351.224(f).⁴ Specifically, Commerce made an error in the calculation of the benefit to Cooper from the provision of synthetic rubber and butadiene for less than adequate remuneration.

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the Final Results to correct the ministerial error. Specifically, we are amending the net subsidy rates for Cooper and the non-selected companies under review.⁵ The revised net subsidy rates are provided below.

Amended Final Results

As a result of correcting the ministerial error, we determine that the countervailable subsidy rates for the producers/exporters under review are as follows:

4. Id. at 5.

5. Id. at 5-6. Because we relied on Cooper's and Qingdao Sentury Tire Co. Ltd.'s subsidy rates to calculate the rate for non-selected companies under review, we are revising the rate for non-selected companies under review in these amended final results. See Final Results at Appendix II for a list of the non-selected companies under review.

Appendix D

Company	Subsidy rate (percent)
Cooper (Kunshan) Tire Co., Ltd. (Cooper)	15.47
Qingdao Sentury Tire Co. Ltd. (Sentury)	15.75
Non-Selected Companies Under Review	15.56

Assessment Rates

Commerce intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these amended final results of review, to liquidate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption, on or after January 1, 2016 through December 31, 2016, at the ad valorem rates listed above.

Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for the companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 25, 2019, the date of publication of the Final Results. For all non-reviewed firms, we will instruct CBP to collect cash deposits at the most-recent company specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Appendix D

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Disclosure

We intend to disclose the calculations performed for these amended final results to interested parties within five business days of the date of the publication of this notice in accordance with 19 CFR 351.224(b).

We are issuing and publishing these results in accordance with sections 751(h) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: June 11, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.