

# U.S. Customs and Border Protection



## DECLARATION OF PERSON WHO PERFORMED REPAIRS OR ALTERATIONS

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

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

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

**DATES:** Comments are encouraged and must be submitted (no later than October 31, 2024) to be assured of consideration.

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

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

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 74741) on November 23, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Declaration of Person Who Performed Repairs or Alterations.

**OMB Number:** 1651–0048.

**Current Actions:** Extension.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Abstract:** The “Declaration of Person Who Performed Repairs or Alterations,” as required by 19 CFR 10.8, is used in connection with the entry of articles entered under subheadings 9802.00.40 and 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS, <https://hts.usitc.gov/current>). Articles entered under these HTSUS provisions are articles that were in the U.S., were exported temporarily for repairs or alterations, and are returned to the United States. Upon their return, duty is only assessed on the value of the repairs performed abroad and not on the full value of the article. The declaration under 19 CFR 10.8 includes information such as a description of the article and the repairs or alterations; the value of the article and the repairs or alterations; and a declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts. The information in this

declaration is used by CBP to determine the value of the repairs or alterations, and to assess duty only on the value of those repairs or alterations.

These requirements apply to the trade community who are familiar with CBP regulations and the tariff schedules and are required by law to provide this declaration.

*Type of Information Collection:* Declaration for Repairs or Alterations.

**Estimated Number of Respondents:** 10,236.

**Estimated Number of Annual Responses per Respondent:** 2.

**Estimated Number of Total Annual Responses:** 20,472.

**Estimated Time per Response:** 30 minutes (0.5 hours).

**Estimated Total Annual Burden Hours:** 10,236.

Dated: September 26, 2024.

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

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Extension; Certificate of Registration  
(CBP Form 4455 & 4457)**

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

**ACTION:** 30-Day notice and request for comments.

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

**DATES:** Comments are encouraged and must be submitted (no later than October 31, 2024) to be assured of consideration.

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

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

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (89 FR 46898) on May 30, 2024, allowing for a 60-day comment period. This notice allows for an additional 30

days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Certificate of Registration.

**OMB Number:** 1651-0010.

**Form Number:** 4455 & 4457.

**Current Actions:** This submission will extend the expiration date of this information collection, with no change to the burden or information collected.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Abstract:** CBP Form 4455, *Certificate of Registration*, is used primarily for the registration, examination, and supervised lading of commercial shipments of articles exported for repair, alteration, or processing, which will subsequently be returned to the United States either duty free or at a reduced duty rate. CBP Form 4455 is accessible at: <http://www.cbp.gov/newsroom/publications/forms?title=4455&=Apply>.

Travelers who do not have proof of prior possession in the United States of foreign made articles and who do not want to be assessed duty on these items can register them prior to departing on travel. To register these articles, the traveler completes CBP Form 4457, *Certificate of Registration for Personal Effects Taken Abroad*, and presents it at the port at the time of export. This form must be signed in the presence of a CBP official after verification of the description of the articles is completed. CBP Form 4457 is accessible at: <http://www.cbp.gov/newsroom/publications/forms?title=4457&=Apply>.

CBP Forms 4455 and 4457 are used to provide a convenient means of showing proof of prior possession of a foreign made item taken on a trip abroad and later returned to the United States. This registration is restricted to articles with serial numbers or unique markings. These forms are provided for by 19 CFR 148.1.

*Type of Information Collection:* CBP Form 4455.

**Estimated Number of Respondents:** 60,000.

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

**Estimated Number of Total Annual Responses:** 60,000.

**Estimated Time per Response:** 10 minutes (0.166 hours).

**Estimated Total Annual Burden Hours:** 9,960.

*Type of Information Collection:* CBP Form 4457.

**Estimated Number of Respondents:** 140,000.

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

**Estimated Number of Total Annual Responses:** 140,000.

**Estimated Time per Response:** 3 minutes (0.05 hours).

**Estimated Total Annual Burden Hours:** 7,000.

Dated: September 26, 2024.

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

## **AGENCY INFORMATION COLLECTION ACTIVITIES:**

### **Extension; Application for Waiver of Passport and/or Visa (DHS Form I-193)**

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

**ACTION:** 30-Day notice and request for comments.

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

**DATES:** Comments are encouraged and must be submitted (no later than October 31, 2024) to be assured of consideration.

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

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

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (89 FR 25277) on April 10, 2024, allowing for a 60-day comment period. This notice allows for an additional 30

days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

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

**Title:** Application for Waiver of Passport and/or Visa (DHS Form I-193).

**OMB Number:** 1651-0107.

**Form Number:** I-193.

**Current Actions:** This submission will extend the authority without changing the annual burden previously reported or information collected.

**Type of Review:** Extension (without change).

**Affected Public:** Individuals.

**Abstract:** The data collected on DHS Form I-193, Application for Waiver of Passport and/or Visa, allows CBP to determine an applicant's identity, alienage, claim to legal status in the United States, and eligibility to enter the United States under 8 CFR 211.1(b)(3) and 212.1(g). DHS Form I-193 is an application completed via oral interview by a CBP Officer with a nonimmigrant alien seeking admission to the United States requesting a waiver of passport and/or visa requirements due to an unforeseen emergency. It is also an application for an immigration alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence aboard requesting a waiver of documentary requirements for good cause. The waiver of the documentary requirements and the information collected on DHS Form I-193 is authorized by Sections 212(a)(7), 212(d)(4), and 212(k) of the Immigration and Nationality Act, as amended, and 8 CFR 211.1(b)(3) and 212.1(g).



This form is accessible at <https://www.uscis.gov/i-193>.

*Type of Information Collection:* I-193.

**Estimated Number of Respondents:** 25,000.

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

**Estimated Number of Total Annual Responses:** 25,000.

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

**Estimated Total Annual Burden Hours:** 4,167.

Dated: September 26, 2024.

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



# U.S. Court of International Trade

Slip Op. 24–104

ZHEJIANG AMERISUN TECHNOLOGY CO., LTD., Plaintiff, v. UNITED STATES,  
Defendant, and BRIGGS & STRATTON, LLC, Defendant-Intervenor.

Before: Jennifer Choe-Groves, Judge  
Court No. 23–00011

[Sustaining the U.S. Department of Commerce’s final scope ruling that certain engines, such as Chongqing Rato’s R210-S engines, are not included in the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225cc and parts thereof from the People’s Republic of China.]

Dated: October 2, 2024

*Brittney R. Powell, Lizbeth R. Levinson, Alexander D. Keyser*, Fox Rothschild LLP, of Washington, D.C., for Plaintiff Zhejiang Amerisun Technology Co., Ltd.

*Claudia Burke*, Deputy Director, and *Kyle S. Beckrich*, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant United States. With them on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, and *Patricia M. McCarthy*, Director. Of counsel on the brief was *JonZachary Forbes*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.

## **OPINION AND ORDER**

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

This action concerns the U.S. Department of Commerce’s (“Commerce”) final scope ruling that the R210-S engine manufactured by Chongqing Rato Technology Co., Ltd. (“Chongqing Rato”) was originally included in the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225cc and parts thereof from China, later changed on remand. Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Scope Ruling on Modified Vertical Shaft Engines (Dec. 22, 2022) (“Final Scope Ruling”), PR 25<sup>1</sup>; *see Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof From the People’s Republic of China*, 86 Fed. Reg. 23,675 (May 4, 2021) (antidumping and countervailing duty orders) (“Orders”).

Before the Court are Commerce’s Final Results of Redetermination Pursuant to Court Remand (“*Remand Redetermination*”), ECF No. 38–1, which reversed Commerce’s original scope ruling and deter-

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<sup>1</sup> Citations to the administrative record reflect the public record (“PR”) document numbers filed in this case. ECF No. 32.

mined on remand that the engine was out of scope. Plaintiff Zhejiang Amerisun Technology, Co., Ltd. (“Plaintiff” or “Zhejiang Amerisun”) and Defendant United States (“the Government” or “Defendant”) filed their comments in support. Pl.’s Cmts. Commerce’s Final Redetermination Pursuant to Remand Order (“Pl.’s Br.”), ECF No. 40; Def.’s Cmts. Supp. Remand Redetermination (“Def.’s Br.”), ECF No. 41. No comments in opposition were filed.

For the reasons discussed below, the Court sustains Commerce’s *Remand Redetermination*.

## BACKGROUND

The Court presumes familiarity with the underlying facts and procedural history of this case. See *Zhejiang Amerisun Tech. Co. v. United States* (“*Zhejiang Amerisun I*”), 48 CIT \_\_, 687 F. Supp. 3d 1282 (2024).

In the Final Scope Ruling, Commerce determined that Chongqing Rato’s R210-S engines were modified vertical shaft engines included in the scope of the *Orders*. See Final Scope Ruling. Commerce examined (k)(1) sources, including the Petition, the underlying ITC Report, and articles from Wikipedia and Pennsylvania State University, to support its determination that the modified vertical shaft engine had a vertical orientation through its vertical “power take off shaft” and followed the primary use outlined in the scope language. Final Scope Ruling at 8–9.

In *Zhejiang Amerisun I*, the Court concluded that Commerce’s scope determination was neither supported by substantial evidence nor in accordance with law because: (1) the scope language of the *Orders* neither specified that a gearbox connected to a shaft was part of the engine, nor included any language that reasonably suggested such a result, and Commerce unlawfully interpreted such silence to assume that the engine was within the scope of the *Orders*; (2) the Wikipedia articles that Commerce cited were not reliable or sufficient evidence for the definition of a “power take off shaft”; and (3) the Pennsylvania State University article on which Commerce relied did not provide sufficient evidentiary support for the scope determination. *Zhejiang Amerisun I*, 687 F. Supp. 3d at 1290–97.

In its *Remand Redetermination*, Commerce determined that certain engines, such as the Chongqing Rato’s R210-S engine, are not covered by the scope of the *Orders*. *Remand Redetermination* at 2.

## JURISDICTION AND STANDARD OF REVIEW

The Court has jurisdiction pursuant to Section 516A(a)(2)(B)(vi) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516A(a)(2)(B)(vi), and 28 U.S.C. § 1581(c). The Court will hold unlawful any determination

found to be unsupported by substantial evidence on the record or otherwise not in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(i).

## DISCUSSION

Both Plaintiff and Defendant seek to sustain the *Remand Redetermination*, but Plaintiff disagrees with “Commerce’s mischaracterization of the R210-S engine as a ‘modified vertical shaft engine.’” See Pl.’s Br. at 1–2; Def.’s Br. at 3–4.

Commerce in its *Remand Redetermination* determined that Chongqing Rato’s R210-S engine was not covered by the scope of the *Orders*, but disagreed with the Court that:

- (1) the language of the scope must specify that a gearbox connected to a shaft is part of an engine in order for Commerce to find that such a configuration is an integrated part of a vertical shaft engine; and
- (2) Commerce may not rely on academic publications that speak to engine structure (such as the article from Penn[sylvania] State University on which Commerce relied in the Final Scope Ruling), even if such sources are not specific to lawn mowers, especially given that the products covered by the *Orders* are not limited to lawn mower engines.

### *Remand Redetermination at 5.*

Commerce also stated that it would not change the characterization of Chongqing Rato’s R210-S engine as a modified vertical shaft engine when referring to its prior determination in the Final Scope Ruling. *Id.* at 6. Commerce asserted that for the purposes of the *Remand Redetermination*, however, it referred to the product at issue as “certain engines such as Chongqing Rato’s [R210-S].” *Id.* Plaintiff agrees with Commerce’s new determination in the *Remand Redetermination* that Chongqing Rato’s R210-S engine and similar engines were excluded from the scope of the *Orders*, but contests Commerce’s description of the Chongqing Rato R210-S engine as a “modified vertical shaft engine,” or “an engine with a horizontal crankshaft connected to a right-angle gearbox, which redirects power from the horizontal crankshaft to a ‘vertical power take off shaft that powers the blades of a lawnmower’” and that “the right-angle gearbox is part of the Chongqing Rato R210-S engine.” Pl.’s Br. at 2.

Defendant asserts that Commerce’s choice of terminology does not undermine its determination that the R210-S engine was outside the scope of the *Orders*. Def.’s Br. at 4. Defendant states that Commerce clarified that its use of language, such as “modified vertical shaft engine” in certain areas, was intended to ensure administrative con-

sistency with the underlying scope inquiry and final scope ruling. *Id.* at 3.

The Court holds that Commerce complied with the Court's remand order in determining that Chongqing Rato's R210-S engine was not covered by the scope of the *Orders*.

### CONCLUSION

For the foregoing reasons, the Court sustains Commerce's *Remand Redetermination* as supported by substantial evidence and in accordance with law. Accordingly, it is hereby

**ORDERED** that the *Remand Redetermination* is sustained.

Judgment will be entered accordingly.

Dated: October 2, 2024

New York, New York

*/s/ Jennifer Choe-Groves*

JENNIFER CHOE-GROVES, JUDGE

## Slip Op. 24–105

CHANDAN STEEL LIMITED, Plaintiff, v. UNITED STATES, Defendant.

Before: Timothy C. Stanceu, Judge  
Court No. 21–00540

[Denying relief on plaintiff's motion for reconsideration of the court's previous decision sustaining an antidumping duty rate of 145.25%]

Dated: October 2, 2024

*Peter J. Koenig*, Squire Patton Boggs (US) LLP, of Washington, D.C., for plaintiff Chandan Steel Limited.

*Geoffrey M. Long*, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for defendant. With him on the response were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Tara K. Hogan*, Assistant Director. Of counsel on the response were *Collin T. Mathias*, Trial Attorney, and *Ashlande Gelin*, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.

## OPINION

**Stanceu, Judge:**

The court previously sustained an antidumping duty rate of 145.25% *ad valorem* assigned by the International Trade Administration, U.S. Department of Commerce (“Commerce” or the “Department”) to plaintiff Chandan Steel Limited (“Chandan”) in the final results of a review of an antidumping duty order. *Kisaan Die Tech Private, Ltd. v. United States*, 47 CIT \_\_, 665 F. Supp. 3d 1364 (2023) (“*Kisaan Die Tech*”). Chandan has filed a “Motion for Reconsideration” of the court’s decision, arguing that the court did not address certain arguments Chandan made in the litigation. Chandan Rule 59(a)/(e) and 60 Mot. for Reconsideration (Jan. 8, 2024), ECF No. 63 (“*Mot. for Reconsideration*”). The court will deny relief on the Motion for Reconsideration and enter judgment in favor of defendant.

## I. BACKGROUND

Background is set forth in the court’s prior opinion and is summarized briefly herein. *See Kisaan Die Tech*, 47 CIT at \_\_, 665 F. Supp. 3d at 1367–68.<sup>1</sup>

<sup>1</sup> This action has been deconsolidated from *Kisaan Die Tech et al. v. United States*, Court No. 21–00512. Order of Judgment by Stipulation, *Kisaan Die Tech et al. v. United States*, Court No. 21–512 (Sept. 30, 2024), ECF No. 85. All filings in Court No. 21–00512 pertinent to Court No. 21–00540 have been incorporated by reference on the docket of this action. Order of Judgment by Stipulation (Sept. 30, 2024), *Chandan Steel Limited v. United States*, Court No. 21–00540, ECF No. 25. All ECF citations herein refer to the filings on the docket of Court No. 21–00512, unless otherwise indicated.

Chandan contested the published final determination (the “Final Results”) Commerce issued to conclude the first periodic administrative review (“first review”) of an antidumping duty order on stainless steel flanges from India. See *Stainless Steel Flanges from India: Final Results of Antidumping Duty Administrative Review; 2018–2019*, 86 Fed. Reg. 47,619 (Int’l Trade Admin. Aug. 26, 2021) (“*Final Results*”); *Stainless Steel Flanges from India: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2018–2019* (Int’l Trade Admin. Aug. 20, 2021), P.R. Doc. 169 (“*Final I&D Mem.*”).<sup>2</sup>

In the first review, Chandan was the sole mandatory respondent, i.e., the only exporter or producer Commerce selected for individual examination. *Kisaan Die Tech*, 47 CIT at \_\_, 665 F. Supp. 3d at 1368. Commerce assigned Chandan the antidumping duty rate of 145.25% as an application of what it termed “total adverse facts available,” referring to the use of “the facts otherwise available” under section 776(a) of the Tariff Act of 1930, as amended (“Tariff Act”), 19 U.S.C. § 1677e(a)<sup>3</sup>, and an “adverse inference” under section 776(b) of the Tariff Act, *id.* § 1677e(b). Commerce found that Chandan repeatedly misreported its foreign sales information and also misreported its cost of production information, and certain other information, that Commerce requested in questionnaires it sent Chandan in the first review. *Kisaan Die Tech*, 47 CIT at \_\_, 665 F. Supp. 3d at 1369–70.

In the Final Results, Commerce applied facts otherwise available and an adverse inference rather than calculate a dumping margin based on Chandan’s sales. Refusing to use record information on these sales, Commerce instead applied “the highest rate alleged in the petition.” *Final I&D Mem.* 33.

In a motion for judgment on the agency record brought before the court under USCIT Rule 56.2, Chandan challenged the 145.25% rate generally on the ground that it made no material errors in its submissions meriting the application of the facts otherwise available and adverse inference provisions in the Tariff Act, and, in the alternative, argued that Commerce unlawfully failed to limit its application of those provisions according to the information—which it alleges could only have been insignificant—that may have been missing from the record. *Kisaan Die Tech*, 47 CIT at \_\_, 665 F. Supp. 3d at 1370. Chandan argued, specifically, that: (1) there was no gap in information that needed to be filled with facts otherwise available, (2) Com-

<sup>2</sup> Documents in the Joint Appendix (Jan. 31, 2023), ECF Nos. 61 (public), 60 (conf.) are cited herein as “P.R. Doc. \_\_.” All citations to record documents are to the public versions.

<sup>3</sup> Citations to the United States Code herein are to the 2018 edition. Citations to the Code of Federal Regulations are to the 2021 edition.



merce failed to notify Chandan of any deficiencies in the submitted information and to allow Chandan the opportunity to address them, (3) Chandan acted to the best of its ability in responding to the Department's information requests, and any errors were insufficient for the use of adverse inferences, and (4) the adverse inferences Commerce used were unlawfully punitive in light of Commerce having at its disposal information sufficient to calculate a weighted-average dumping margin for the vast majority of Chandan's sales. *Id.*; see Pl. Chandan's Mot. for J. on the Agency R. (June 30, 2022), ECF No. 37 ("56.2 Mot."); Pl. Chandan's Reply Br. (Jan. 17, 2023), ECF No. 59.

The court rejected Chandan's arguments in sustaining the Department's assigning Chandan the "adverse inference" rate of 145.25%. Specifically, the court sustained the Department's application of facts otherwise available and an adverse inference based on the Department's finding that Chandan failed to provide Commerce a comparison market sales database that complied fully with reporting instructions even though Commerce brought the reporting errors to Chandan's attention and allowed two opportunities for resubmission. *Kisaan Die Tech*, 47 CIT at \_\_, 665 F. Supp. 3d at 1370–74. The court stated that it "need not resolve the disagreements between the parties that arise from" the Department's other findings upon which it based its application of facts otherwise available and an adverse inference. *Id.* at \_\_, 665 F. Supp. 3d at 1376–77.

After the court issued its Opinion and Order in *Kisaan Die Tech* on December 8, 2023, Chandan filed the instant Motion for Reconsideration, in which Chandan argues that the court's failure to consider certain of its arguments in its Rule 56.2 motion constituted "clear factual or legal error" and an "oversight." *Mot. for Reconsideration 3*.

Defendant opposes the Motion for Reconsideration. Def.'s Resp. to Pl.'s Mot. for Reconsideration (Mar. 4, 2024), ECF No. 68. Chandan has submitted a reply. Pl. Chandan's Reply to Def. United States Resp. to Chandan's Mot. to Reconsider (Mar. 25, 2024), ECF No. 71 ("Reply").

## II. DISCUSSION

A decision whether to grant relief on a motion for reconsideration is within the exercise of the court's sound discretion. *Yuba Natural Res., Inc. v. United States*, 904 F.2d 1577, 1583 (Fed. Cir. 1990). As provided in USCIT Rule 59(a)(1)(B), the court may grant a rehearing "for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court." USCIT Rule 60(b) provides for relief from a

final order for “mistake, inadvertence, surprise, or excusable neglect,” *id.* 60(b)(1), or “any other reason that justifies relief,” *id.* 60(b)(6).

The court reviewed the Final Results according to the standard of review set forth in 19 U.S.C. § 1615a(b)(1)(B)(i), under which the court “shall hold unlawful any determination, finding, or conclusion found . . . to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.” Substantial evidence refers to “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1378 (Fed. Cir. 2008) (quoting *Consol. Edison Co. v. Nat’l Lab. Rels. Bd.*, 305 U.S. 197, 229 (1938)).

In *Kisaan Die Tech*, the court sustained the Department’s assignment of the 145.25% margin to Chandan on the ground that Chandan, as Commerce permissibly found based on substantial record evidence, failed to make a timely filing of a complete database for its sales of the foreign like product in the comparison market (in the first review, the Netherlands). The court cited record evidence demonstrating that Commerce identified reporting errors and gave Chandan two opportunities to resubmit the database. Commerce found that Chandan’s first submission of the database (on June 30, 2020), made in response to a request in the Department’s March 30, 2020 questionnaire, “did not include a complete list of the requested sales in the comparison market” because it failed to report, as required, “window period” sales occurring outside of the period of review (“POR”).<sup>4</sup> *Kisaan Die Tech*, 47 CIT at \_\_, 665 F. Supp. 3d at 1371–72.

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<sup>4</sup> With regard to “window period” sales, the Department’s standard margin calculation method compares a U.S. sale of the subject merchandise with one or more comparison market sales of the foreign like product, as defined according to 19 U.S.C. § 1677(16), occurring in the “comparison month.” While the “comparison month” normally is the month of the period of review contemporaneous with the month of the U.S. sale, Commerce looks for a sale of comparable merchandise during a “window period” month if it determines that no comparable sale occurred during the contemporaneous month. The “window period” consists of the three months prior to, and the two months following, the contemporaneous month. The court’s earlier opinion summarized the Department’s methodology as follows:

In requiring reporting of comparison market sales that occurred during the five-month “window period,” including those that may have occurred outside the actual POR, Commerce was effectuating its “average-to-transaction” method of comparing sales. See 19 C.F.R. § 351.414; *Final I&D [“Issues and Decision”] Mem.* at 8 (“ . . . in administrative reviews, Commerce normally compares the export price (EP) or constructed export price (CEP) of an individual U.S. sale to an average normal value (NV) based on a contemporaneous month in the comparison market.”). Under this method, the “comparison month” is the same month as the U.S. sale or, if no matching sales occurred during that month, then the comparison month is “the most recent of the three months prior to the month of the U.S. sales in which there was a sale of the foreign like product.” 19 C.F.R. § 351.414(f)(2). “If there are no sales of the foreign like product during any of these months,” the comparison month will be “the earlier of the two months following the month of the U.S. sales in which there was a sale of the foreign like product.” *Id.* § 351.414(f)(3).

*Kisaan Die Tech*, 47 CIT \_\_, 665 F. Supp. 3d at 1371.

Commerce pointed out this error to Chandan in an “August 19, 2020 Supplemental Questionnaire.” *Id.* at \_\_, 665 F. Supp. 3d at 1372, *Final I&D Mem.* at 5 & n.26. Chandan resubmitted its comparison market sales database on September 11, 2020, but Commerce later found this response to be deficient and, in a “November 25, 2020 Supplemental Questionnaire,” requested revision and resubmission of, *inter alia*, the comparison market sales database. Letter from Robert Galantucci, Program Manager, Office V, to Chandan Steel Limited, c/o Arpit Bhargava, SBA Strategy Consulting LLP, regarding “Supplemental Questionnaire” (Nov. 25, 2020), P.R. Doc. 104 (“*Nov. 25, 2020 Supplemental Questionnaire*”).

As the court noted in *Kisaan Die Tech*, “Chandan concedes that its September 11, 2020 Response omitted sales of the foreign like product of nominal size less than 1.5 inches,” 47 CIT at \_\_, 665 F. Supp. 3d at 1372, even though Commerce required reporting of sales of the foreign like product in nominal size ranging from one-half inch to twenty-four inches, *id.* at \_\_, 665 F. Supp. 3d at 1368 n.2, 1371–72. After Commerce notified Chandan in the November 25, 2020 Supplemental Questionnaire of its finding that the September 11, 2020 database was deficient, Chandan, on December 9, 2020, again resubmitted its comparison market sales database. *Id.* at \_\_, 665 F. Supp. 3d at 1372. This response, too, was deficient because, as Commerce found, “Chandan once again submitted a comparison market database without including sales covering the full five-month window period.” *Id.* (quoting *Final I&D Mem.* at 6). Chandan made a filing on March 16, 2021 as an attempt to make a resubmission for the record, but Commerce rejected it as untimely. *Id.* at \_\_, 665 F. Supp. 3d at 1373. The attempted resubmission was made “nearly eleven months after the initial due date” and after Commerce had issued the preliminary results of the review (on February 24, 2021). *Id.* at \_\_, 665 F. Supp. 3d at 1373–74.

In its Motion for Reconsideration, Chandan states that in *Kisaan Die Tech* the court failed to address the following argument:

In its [Rule 56.2] Motion (at 6–10, 15–25), Chandan argued that (a) any errors in its questionnaire responses in the accepted record were non-existent to inconsequential and anyway remedial from the accepted record, citing specific record evidence in support thereof, such that (b) the accepted record before Commerce supported calculating Chandan’s dumping margin from Chandan’s questionnaire responses, and thus (c) Commerce[’s] use of facts available, much less adverse facts available, is unsupported by the statutorily required substantial evidence and contrary to law, again, this Court’s review standard.

*Mot. for Reconsideration 2.* Chandan asserts, specifically, that the opinion in *Kisaan Die Tech* overlooked its argument that substantial evidence did not support the finding of a “gap or deficiency in the Chandan questionnaire responses” allowing Commerce to “lawfully use facts available, much less adverse facts, to calculate the dumping margin on specific U.S. sales.” *Id.* at 3. The court rejects these arguments.

Commerce permissibly found from the record evidence that Chandan, through repeated errors, failed to submit on a timely basis a complete, and therefore satisfactory, database for its comparison market sales. *Kisaan Die Tech*, 47 CIT at \_\_\_, 665 F. Supp. 3d at 1374 (“Commerce did not receive a complete and reliable comparison market sales database during the questionnaire period . . .”). Commerce specifically found, according to substantial record evidence, that Chandan’s comparison market sales database, as resubmitted a second time on December 9, 2020, was incomplete.

Chandan also addresses in its Motion for Reconsideration the issue of missing comparison market sales, as follows: “At best, such sales were only even potentially needed to calculate the dumping margin of an inconsequential portion (at most, 0.4%) of the U.S. sales.” *Mot. for Reconsideration 3–4* (citations omitted). Chandan adds that “[t]hose claimed comparison market sales were not applicable to calculate the dumping margin on all other U.S. sales (i.e., at least 99.6% of U.S. sales) and thus do not support Commerce’s failure to calculate the dumping margin for those (99.6%) of U.S. sales.”<sup>5</sup> *Id.* at 4. According to this argument, Commerce was not authorized by 19 U.S.C. § 1677e to use the facts otherwise available, or an adverse inference, for the U.S. sales for which a matching sale was available in the comparison market database as timely provided by Chandan.

Chandan fails to demonstrate that the December 9, 2020 submission of its corrected comparison market database was not missing some “window period sales” that occurred outside of the period of review. Chandan’s argument appears to be that because missing comparison market sales could only have been window period sales outside of the POR, those sales would hinder the Department’s margin calculation only if no comparison market sales could be found without resort to a window period month that did not fall within the period of review. According to Chandan, only the U.S. sales affected by the omissions, at most, should have been assigned an adverse inference rate. Instead, Commerce invoked 19 U.S.C. § 1677e(a) as to the

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<sup>5</sup> Plaintiff argued that Commerce should have combined the December 9, 2020 version of the comparison market database with Chandan’s previously submitted database, arguing that it would have been “a simple matter” for Commerce to combine two databases. *56.2 Mot.* 9.

comparison market database on the whole and applied an adverse inference on findings that Chandan did not “act[] to the best of its ability” to comply with its requests for information, *id.* § 1677e(b). Thus, Commerce did not base its assigned margin of 145.25% on any of Chandan’s U.S. or foreign sales data.

Even were the court to assume for the sake of argument that Chandan has correctly calculated that missing comparison market sales would not have affected the individual margin calculations for 99.6% of its U.S. sales, the court still could not agree that the Tariff Act required Commerce to use the December 9, 2020 sales database, any part of it, or any other information on the record, to calculate a dumping margin for Chandan. The court grounds its conclusion in specific Tariff Act provisions, as discussed below.

One such provision expressly addresses the obligation of Commerce to use information submitted in response to a request that is incomplete but “is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination.” 19 U.S.C. § 1677m(e)(3). While at first glance this provision might be seen to describe the December 9, 2020 database and support the position Chandan advocates, the provision imposes the following condition: “the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority . . . with respect to the information.” *Id.* § 1677m(e)(4). As the court concluded in *Kisaan Die Tech*, substantial evidence supported the Department’s finding that Chandan did not act to the best of its ability in submitting the comparison market sales database. *Kisaan Die Tech*, 47 CIT at \_\_\_, 665 F. Supp. 3d at 1375. In summary, Congress contemplated in 19 U.S.C. § 1677m(e) a situation that may have been beneficial to Chandan but for Chandan’s failure to act to the best of its ability, as required by the provision and by the related provision, § 1677e(b).

In *Kisaan Die Tech*, the court concluded, further, that a related Tariff Act provision, 19 U.S.C. § 1677m(d), did not require Commerce to use the December 9, 2020 sales database, Commerce having previously brought the reporting error to Chandan’s attention and having allowed Chandan the opportunity to correct it. 47 CIT at \_\_\_, 665 F. Supp. 3d at 1374. Commerce found, according to the record evidence, that the December 9, 2020 database was “not satisfactory” within the meaning of § 1677m(d)(1) and, therefore, had authority to disregard it in the entirety. *See* 19 U.S.C. § 1677m(d) (authorizing Commerce, in that situation, to “disregard all or part of the original and subsequent responses”). While Chandan maintains that Commerce was required to perform a margin calculation using this data-

base, even if incomplete, *Mot. for Reconsideration 4, Reply 6*, subsections (d) and (e) of § 1677m expressly provided Commerce the discretion not to do so in the particular situation presented by this case.

The “facts otherwise available” provision of 19 U.S.C. § 1677e(a) is also contrary to Chandan’s argument. In Chandan’s view, Commerce could invoke this provision to use the facts otherwise available and an adverse inference only as to those U.S. sales for which sales data missing from the December 9, 2020 sales database prevented a valid comparison with the foreign like product. According to Chandan, even if some comparison market sales were missing from the version of the comparison market database that it timely submitted, Commerce still acted contrary to 19 U.S.C. § 1677e in using facts otherwise available and an adverse inference, instead of actual data, to determine individual dumping margins for those of Chandan’s U.S. sales that, according to Chandan, were not affected by those deficiencies. *Mot. for Reconsideration 4; Reply 4–7*.

The flaw in Chandan’s argument is that 19 U.S.C. § 1677e(a) does not confine the use of the facts otherwise available to a situation where “necessary information is not available on the record” as stated in 19 U.S.C. § 1677e(a)(1). As to a request for information, Congress also provided that Commerce “shall . . . use the facts otherwise available” when “an interested party . . . fails to provide such information . . . *in the form and manner requested*, subject to subsections (c)(1) and (e) of section 1677m of this title.”<sup>6</sup> 19 U.S.C. § 1677e(a)(2)(B) (emphasis added). For the Final Results, Commerce made a factual finding that Chandan’s resubmitted, and still incomplete, “comparison market database” was not reported “in the form or manner required, within the meaning of section 776(a)(2)(B) of the Act [19 U.S.C. § 1677e(a)(2)(B)].” *Final I&D Mem.* 11. In making this finding, Commerce considered a comparison market database to be the subject of its information requests for purposes of § 1677e(a)(2)(B). While Commerce may have had discretion to reach a finding that was more limited, and thus more favorable to Chandan, the court must review the Department’s determination according to the standard of review. In doing so, the court cannot conclude on this

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<sup>6</sup> Subsection (c)(1) of 19 U.S.C. § 1677m is not applicable here, applying only when an interested party informs Commerce that it is unable to submit the requested information in the form and manner requested. Nor is subsection (e) of § 1677m a basis upon which the court could grant relief on plaintiff’s Motion for Reconsideration. As discussed earlier in this Opinion, Commerce permissibly concluded that Chandan did not act to the best of its ability in submitting its comparison market sales database.

record that the findings upon which Commerce acted were unsupported by substantial record evidence or that Commerce otherwise acted contrary to law.

Substantial record evidence supports the Department's finding that the comparison market sales database was itself the subject of a request for information. *See Nov. 25, 2020 Supplemental Questionnaire* at 1, 2 (requesting revision and resubmission of the comparison market sales database). Substantial evidence also supports the Department's finding that Chandan failed to submit that database in the form and manner requested.<sup>7</sup> Nor can the court conclude that Commerce misapplied the pertinent Tariff Act provisions in assigning Chandan the 145.25% rate. As discussed above, Commerce acted within the discretion granted by those provisions in disregarding Chandan's submission of its comparison market sales database in the entirety.

### III. CONCLUSION

For the reasons stated above, the court rules that the Motion for Reconsideration does not identify a factual or legal error in the court's decision in *Kisaan Die Tech* that entitles Chandan to relief.

The court will deny the Motion for Reconsideration and, pursuant to USCIT Rule 56.2(b), enter judgment in favor of the United States on Chandan's previous motion for judgment on the agency record.

Dated: October 2, 2024

New York, New York

*/s/ Timothy C. Stanceu*

TIMOTHY C. STANCEU

*Judge*

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<sup>7</sup> In support of its argument that Commerce lawfully could apply 19 U.S.C. § 1677e to, at most, U.S. sales for which there was missing comparison market sales data, Chandan relied in its Rule 56.2 motion on *Diamond Sawblades Mfrs.' Coal. v. United States*, 986 F.3d 1351 (Fed. Cir. 2021) ("*Diamond Sawblades*"). *56.2 Mot.* 6. This case is inapposite. In *Diamond Sawblades*, the Court of Appeals for the Federal Circuit held that the agency's finding that the submitter of information failed to provide information "in the form and manner requested" was unsupported by substantial record evidence (a holding the court cannot reach in this case) and noted, further, that the submitter was not found to have missed any deadline for the submission of requested information. *Diamond Sawblades*, 986 F.3d at 1363.





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