

# U.S. Customs and Border Protection



## AFRICAN GROWTH AND OPPORTUNITY ACT (AGOA) TEXTILE CERTIFICATE OF ORIGIN

**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 December 1, 2022) 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** (87 FR 37881) on June 24, 2022, 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:** African Growth and Opportunity Act (AGOA) Textile Certificate of Origin.

**OMB Number:** 1651–0082.

**Form Number:** N/A.

**Current Actions:** CBP proposes to extend the expiration date of this information collection with an increase in burden hours due to revised agency estimates, there is no change to the information collected.

**Type of Review:** Extension (with change).

**Affected Public:** Businesses.

**Abstract:** The African Growth and Opportunity Act (AGOA) was adopted by the U.S. with the enactment of the Trade and Development Act of 2000 (Pub. L. 106–200). The objectives of AGOA are (1) to provide for extension of duty-free treatment under the Generalized System of Preferences (GSP) to import sensitive articles normally excluded from GSP duty treatment, and (2) to provide for the entry of specific textile and apparel articles free of duty and free of any quantitative limits from eligible countries of sub-Saharan Africa.

For preferential treatment of textile and apparel articles under AGOA, the exporter or producer is required to prepare a certificate of

origin and provide it to the importer. The certificate of origin includes information such as name and address of the exporter, producer, and importer; the basis for which preferential treatment is claimed; and a description of the imported article(s). The importers are required to have the certificate in their possession at the time of the claim, and to provide it to Customs and Border Protection (CBP) upon request. The collection of this information is provided for in 19 CFR 10.214, 10.215, and 10.216.

Instructions for complying with this regulation are posted on *CBP.gov* website at: <https://www.cbp.gov/trade/rulings/informed-compliance-publications>. This collection of information applies to the importing and trade community who are familiar with import procedures and with the CBP regulations.

*Type of Information Collection:* AGOA Textile Certificate of Origin.

**Estimated Number of Respondents:** 68.

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

**Estimated Number of Total Annual Responses:** 68.

**Estimated Time per Response:** 20 minutes.

**Estimated Total Annual Burden Hours:** 23 hours.

Dated: October 27, 2022.

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

[Published in the Federal Register, November 1, 2022 (85 FR 65791)]

## ACCREDITATION OF COMMERCIAL TESTING LABORATORIES AND APPROVAL OF COMMERCIAL GAUGERS

**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 (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 December 1, 2022) 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:** U.S. Customs and Border Protection (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** (87 FR 39107) on June 30, 2022, 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:** Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers.

**OMB Number:** 1651-0053.

**Form Number:** CBP Form 6478.

**Current Actions:** This submission is being made to extend the expiration date with a decrease to the burden hours. There is no change to the information collected or method of collection.

**Type of Review:** Extension (with change).

**Affected Public:** Businesses.

**Abstract:** Commercial laboratories seeking to become a Customs and Border Protection (CBP) Accredited Laboratory and commercial gaugers seeking to become a CBP Approved Gauger must submit the information specified in 19 CFR 151.12 and 19 CFR 151.13, respectively, to CBP on CBP Form 6478. After the initial accreditation and/or approval, a private company may apply to include additional facilities under its accreditation and/or approval by submitting a formal written request to CBP. This application process is authorized by Section 613 of Public Law 103-182 (North American Free Trade Agreement Implementation Act), codified at 19 U.S.C. 1499(b), which directs CBP to establish a procedure to accredit privately owned testing laboratories. The information collected is used by CBP in deciding whether to approve individuals or businesses desiring to measure bulk products or to analyze importations. Instructions for completing these applications are accessible at:

*<http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.*

CBP Form 6478 is accessible at: *<https://www.cbp.gov/sites/default/files/assets/documents/2022-May/CBP%20Form%206478.pdf>*.

*Type of Information Collection:* Application.

**Estimated Number of Respondents:** 8.

**Estimated Number of Respondents:** 1.

**Estimated Number of Total Annual Responses:** 8.

**Estimated Time per Response:** 75 minutes.

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

Dated: October 27, 2022.

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

[Published in the Federal Register, November 1, 2022 (85 FR 65790)]

## **CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION FOR TRANSPORT UNDER CUSTOMS SEAL**

**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 December 1, 2022) 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** (87 FR 34895) on June 8, 2022, 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:** Cargo Container and Road Vehicle Certification for Transport under Customs Seal

**OMB Number:** 1651-0124.

**Form Number:** N/A.

**Current Actions:** CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

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

**Affected Public:** Businesses.

**Abstract:** The United States is a signatory to several international Customs conventions governing cargo container and road vehicle certification procedures that specify the technical requirements that containers and road vehicles must meet to be acceptable for transport under Customs seal. U.S. Customs and Border Protection (CBP) has the responsibility of administering the procedures within Title 19, Part 115 for the purpose of certifying U.S.-manufactured containers and road vehicles for use in international transport under Customs seal. The certification process involves container and road vehicle manufacturers, owners, or operators submitting applications for approval to the certifying authorities (the entities designated in 19 CFR 115.6: The American Bureau of Shipping; International Cargo Gear Bureau, Inc.; The National Cargo Bureau, Inc.). Applications to request certification approvals from the above-mentioned certifying authorities are submitted directly to these organizations on the appropriate forms (*i.e.*, that are created by the organizations themselves). The certification process is



voluntary for manufacturers, and therefore Part 115 does not require certification of said container and road vehicles. A certification of compliance facilitates the efficient movement of containers and road vehicles across international territories. The procedures for obtaining a certification of a container or vehicle are set forth in 19 CFR part 115.

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

*Type of Information Collection:* Cargo Container/Vehicle Certification.

**Estimated Number of Respondents:** 25.

**Estimated Number of Annual Responses per Respondent:** 120.

**Estimated Number of Total Annual Responses:** 3,000.

**Estimated Time per Response:** 3.5 hours.

**Estimated Total Annual Burden Hours:** 10,500.

Dated: October 27, 2022.

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

[Published in the Federal Register, November 1, 2022 (85 FR 65788)]

**PROTEST (CBP FORM 19)**

**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 December 1, 2022) 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** (87 FR 34894) on June 8, 2022, 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:** Protest.

**OMB Number:** 1651-0017.

**Form Number:** CBP Form 19.

**Current Actions:** CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

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

**Affected Public:** Businesses.

**Abstract:** U.S. Customs and Border Protection (CBP) Form 19, *Protest*, is filed to seek the review of a CBP decision. This review may be conducted by CBP personnel who participated directly in the underlying decision. This form is also used to request "Further Review," which means a request for review of the protest to be performed by CBP personnel who did not participate directly in the protested decision or by the Commissioner, or his designee, as provided in the CBP regulations.

The matters that may be protested include: the appraised value of merchandise; the classification and rate and amount of duties chargeable; all charges within the jurisdiction of the Secretary of Homeland Security or the Secretary of the Treasury; exclusion of merchandise from entry or delivery, or demand for redelivery; the liquidation or reliquidation of an entry or any modification of an entry; the refusal to pay a claim for drawback; refusal to reliquidate an entry made before December 18, 2004 under section 520(c) of the Tariff Act of 1930; or refusal to reliquidate an entry under section 520(d) of the Tariff Act of 1930.

The parties who may file a protest or application for further review include: the importer or consignee shown on the entry papers, or their

sureties; any person paying any charge or exaction; any person seeking entry or delivery, with respect to a determination of origin under 19 CFR 181 Subpart G any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a Certification of Origin covering the merchandise as provided for in 19 CR 181.11(a); of any person filing a claim for drawback; or any authorized agent of any of the persons described above.

CBP Form 19 collects information such as the name and address of the protesting party, information about the entry being protested, detailed reasons for the protest, and justification for applying for further review.

The information collected on CBP Form 19 is authorized by Sections 514 and 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514 and 1514 (a)) and provided for by 19 CFR part 174 *et seq.* This form is accessible at: [https://www.cbp.gov/newsroom/publications/forms?title\\_1=19](https://www.cbp.gov/newsroom/publications/forms?title_1=19).

*Type of Information Collection:* Protest (Form 19).

**Estimated Number of Respondents:** 3,750.

**Estimated Number of Annual Responses per Respondent:** 12.

**Estimated Number of Total Annual Responses:** 45,000.

**Estimated Time per Response:** 1 hour.

**Estimated Total Annual Burden Hours:** 45,000.

Dated: October 27, 2022.

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

[Published in the Federal Register, November 1, 2022 (85 FR 65789)]

## ADMINISTRATIVE RULINGS

**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 December 1, 2022) to be assured of consideration.

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**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** (87 FR 35563) on June 10, 2022, 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:** Administrative Rulings.

**OMB Number:** 1651-0085.

**Form Number:** N/A.

**Current Actions:** CBP proposes to extend the expiration date of this information collection with an increase in the estimated burden hours previously reported. There is no change to the information being collected.

**Type of Review:** Extension (with change).

**Affected Public:** Businesses.

**Abstract:** The collection of information in 19 CFR part 177 is necessary in order to enable Customs and Border Protection (CBP) to respond to requests by importers and other interested persons for the issuance of administrative rulings. These rulings pertain to the interpretation of applicable laws related to prospective and current or completed transactions involving, but not limited to classification, marking, valuation, carrier, and country of origin. The collection of information in Part 177 of the CBP Regulations is also necessary to enable CBP to make proper decisions regarding the issuance of binding rulings that modify or revoke prior CBP binding rulings. This collection of information is authorized by 5 U.S.C. 301, 19 U.S.C. 66, 1202, (General Note 3(i), Harmonized Tariff Schedule of the United States), 1502, 1624, 1625. The application to obtain an administrative ruling is accessible at: <https://rulings.cbp.gov/s/> or the public can submit a ruling request by mail (or email).

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

*Type of Information Collection:* Administrative Rulings.

**Estimated Number of Respondents:** 3,500.

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

**Estimated Number of Total Annual Responses:** 3,500.

**Estimated Time per Response:** 20 hours.

**Estimated Total Annual Burden Hours:** 70,000.

*Type of Information Collection:* Appeals.

**Estimated Number of Respondents:** 100.

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

**Estimated Number of Total Annual Responses:** 100.

**Estimated Time per Response:** 30 hours.

**Estimated Total Annual Burden Hours:** 3,000.

Dated: October 27, 2022.

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

[Published in the Federal Register, November 1, 2022 (85 FR 65792)]





# U.S. Court of International Trade

Slip Op. 22–121

AJMAL STEEL TUBES & PIPES INDUSTRIES LLC, Plaintiff, v. UNITED STATES, Defendant, WHEATLAND TUBE COMPANY, Defendant-Intervenor

Before: Jane A. Restani, Judge  
Court No. 21–00587

[Commerce’s final determination in the 2018–2019 administrative review of the antidumping order on circular welded carbon-quality steel pipe from the United Arab Emirates is remanded for reconsideration consistent with this opinion.]

Dated: October 28, 2022

*David G. Forgue*, Barnes, Richardson, & Colburn, LLP, of Chicago, IL, argued for Plaintiff Ajmal Steel Tubes & Pipes Industries LLC.

*Kelly M. Geddes*, Commercial Litigation Branch, U.S. Department of Justice, of Washington, DC, argued for Defendant United States of America. With her on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Franklin E. White, Jr.*, Assistant Director, Commercial Litigation Branch, U.S. Department of Justice, of Washington, DC. Of counsel on the brief was *Vania Y. Wang*, Office of Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, DC.

*Luke A. Meisner*, Schagrin Associates, of Washington, DC, argued for Defendant-Intervenor Wheatland Tube Company. With him on the brief were *Roger B. Schagrin* and *Kelsey M. Rule*.

## **OPINION AND ORDER**

### **Restani, Judge:**

This action is a challenge to the final determination made by the United States Department of Commerce (“Commerce”) in the periodic review of the antidumping (“AD”) order for carbon-quality pipe from the United Arab Emirates (“UAE”) covering the period from December 1, 2018, through November 30, 2019.

Plaintiff requests that the court hold aspects of Commerce’s final determination unsupported by substantial evidence or otherwise not in accordance with law. The United States (“Government”) asks that the court sustain Commerce’s final determination.

### **BACKGROUND**

Ajmal Steel Tubes & Pipes Ind. LLC (“Ajmal”) is a producer of carbon-quality pipe from the UAE. Pl. Br. at 4. Since 2016, this product has been subject to an AD order. *See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, and the*

*United Arab Emirates: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders*, 81 Fed. Reg. 91906 (Dec. 19, 2016). On March 3, 2020, Commerce selected Ajmal and Universal Tube and Plastic Industries, Ltd. (“Universal”) as mandatory respondents for an administrative review of the antidumping order and issued questionnaires with the Section A responses due March 24, 2020. *Respondent Selection for the Antidumping Duty Review of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates* at 1, P.R. 26 (Mar. 3, 2020); *see also* Def. Br. at 2. Subsequently, Ajmal submitted an extension of time request (“EOT”) on March 19, 2020, and another EOT on April 3, 2020, for delays “due to the COVID-19 global pandemic.” *Ajmal March 19, 2020, Section A Extension Request* at 1, P.R. 33 (Mar. 19, 2020); *Ajmal April 3, 2020, Section A–D Extension Request* at 2, P.R. 39 (Apr. 3, 2020). Ajmal submitted each of these EOTs several days prior to its respective filing deadlines and Commerce granted both requests, setting a due date of April 14, 2020. *See id.* ; *see also* *USDOC April 3, 2020, Extension Request Approval* at 1, P.R. 40 (Apr. 3, 2020).

On April 14, 2020, Universal submitted its Section A filing in a timely manner. *Universal Section A Response* at 1, P.R. 41 (Apr. 14, 2020). Ajmal, however, failed to submit any documents before the 5:00 PM deadline, submitting an untimely EOT at 6:10 PM and the complete Section A filing at 6:42 PM. *Ajmal April 14, 2020, Section A Extension Request*, P.R. 48 (Apr. 14, 2020) (“April 14, 2020, EOT”); *see also* Def. Br. at 4. Commerce denied the untimely EOT on April 16, 2020, *USDOC April 16, 2020, Extension Request Denial* at 3, P.R. 49 (Apr. 16, 2020) (“First Denial”), thereby rejecting the Section A filing and not considering it as a part of the official record. Ajmal submitted a request to reconsider the decision on April 19, 2020. *Ajmal April 19, 2020, Request to Reconsider the April 16, 2020, EOT Denial*, P.R. 50 (Apr. 19, 2020) (“First Request to Reconsider”). Commerce denied Ajmal’s First Request to Reconsider on May 7, 2020, *USDOC May 7, 2020, Extension Request Denial* at 3, P.R. 52 (May 7, 2020) (“Second Denial”), and Ajmal submitted a second request to reconsider on May 13, 2020, *Ajmal May 13, 2020, Request to Reconsider the April 16, 2020, EOT Denial* at 1, P.R. 53 (May 13, 2020) (“Second Request to Reconsider”). Ajmal and Commerce discussed the denied EOT during a May 21, 2020, phone call, *USDOC Ex Parte Phone Call Meeting Memo* at 1, P.R. 57 (May 21, 2020), and a petitioner in the administrative review, Wheatland Tube Company (“Wheatland”), submitted a letter in opposition to granting the untimely EOT on June 3, 2020.

*Wheatland June 3, 2020, Letter in Opposition to Ajmal's EOT* at 1, P.R. 58 (June 3, 2020) (“Wheatland Opposition Letter”). On July 6, 2020, Commerce denied Ajmal’s Second Request to Reconsider, relying in part on information contained in the letter from Wheatland. *USDOC July 6, 2020, Extension Request Denial* at 2, P.R. 72 (July 6, 2020) (“Third Denial”).

Prior to the Second Denial, on April 24, 2020, Commerce tolled all deadlines in AD and countervailing duty (“CVD”) investigations by 50 days, thereby extending the deadline for the Sections B, C, and D submissions from May 14, 2020, to July 2020. *See USDOC April 24, 2020, COVID-19 Tolling Memo* at 1, P.R. 51 (Apr. 24, 2020) (“First Tolling Memo”). Commerce’s decision to toll all deadlines did not apply to deadlines that had already passed, therefore, Ajmal’s untimely Section A filing still was considered untimely. *See Third Denial* at 3. On July 6, 2020, Ajmal filed its response to Sections B, C, and D in a timely manner. *Antidumping Duty Review of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Section B-D Questionnaire Response* at 1 (July 6, 2020). Two weeks later, Commerce tolled all deadlines in administrative reviews by an additional 60 days. *USDOC July 21, 2020, COVID-19 Tolling Memo* at 1, P.R. 73 (July 21, 2020) (“Second Tolling Memo”). Commerce published its preliminary results on April 16, 2021, *see Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates*, 86 Fed. Reg. 21,688 (Dep’t Commerce Apr. 23, 2021), along with the accompanying *Decision Memorandum for the Preliminary Results of the 2018–2019 Administrative Review of the Antidumping Duty Order on Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates*, A-520–807, POR 12/01/2018–11/30/2019 (Dep’t Commerce Apr. 16, 2021) (“PDM”). Due to the gap in the record created by the untimely submission and subsequent rejection of Ajmal’s Section A filing, Commerce applied facts otherwise available with an adverse inference (“AFA”) pursuant to 19 U.S.C. § 1677e (2015) to Ajmal, and preliminarily assigned the highest dumping rate in the petition, 54.27%, as Ajmal’s new dumping rate. *PDM* at 11; *see also* Def. Br. at 6.

On July 30, 2021, Commerce issued a post-preliminary questionnaire to Universal, but did not issue any additional questionnaires to Ajmal as Commerce “based Ajmal’s margin for the *Preliminary Results* on total AFA.” *Issues and Decision Memorandum for the Final Results of the 2018–2019 Administrative Review of the Antidumping Duty Order on Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates*, A-520–807, POR: 12/1/2018–11/30/2019, at 2–3 (Dep’t Commerce Oct. 20, 2021) (“IDM”). Commerce published its final determination on October 27, 2021, finalizing the application of

AFA and the rate of 54.27% described in the preliminary results. *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates*, 86 Fed. Reg. 59,364 (Dep't Commerce Oct. 27, 2021) (“*Final Results*”); see also *IDM* at 2–3. This rate of 54.27% is approximately 9 times higher than the highest rate Commerce had previously assigned Ajmal. Pl. Br. at 6. Ajmal raises challenges to the final determination, particularly the application of AFA.

### **JURISDICTION & STANDARD OF REVIEW**

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) (2020) and 19 U.S.C. § 1516a(a)(2)(B)(i) (2020). The court will uphold Commerce’s determinations in an AD proceeding unless they are “unsupported by substantial evidence on the record, or otherwise not in accordance with law[.]” 19 U.S.C. § 1516a(b)(1)(B)(i).

### **DISCUSSION**

Commerce will not consider or retain in the official record untimely filed factual information. 19 C.F.R. § 351.302(d) (2013). When Commerce rejects information or information does not exist in the record, there may be a gap in the record requiring Commerce to use facts available and permitting it, in certain circumstances, to use AFA. See 19 U.S.C. § 1677e; see e.g., *Tau-Ken Temir LLP v. United States*, 46 CIT \_\_, \_\_, 587 F.Supp.3d 1346, 1362 (2022). Here, Commerce rooted its use of AFA in the gap created by the missing information theoretically contained in the rejected Section A filing. *PDM* at 10. A granted EOT would have remedied the default caused by the delay in the Section A filing, and presumably the resulting gap in information. Therefore, Commerce’s use of AFA, as currently articulated, is predicated upon whether Commerce was reasonable in denying Ajmal’s untimely EOT.

#### **I. Commerce’s Denial of Ajmal’s EOT**

Ajmal primarily challenges Commerce’s denial of Ajmal’s untimely April 14, 2020, EOT on two grounds. First, Ajmal argues that “technical difficulties in work operations related to the newly emerging COVID-19 global pandemic are ‘extraordinary circumstances’ as contemplated under 19 C.F.R. § 351.302(c)(2).” Pl. Br. at 3. Second, Ajmal contends that the denial of the EOT was arbitrary and capricious, as Commerce subsequently tolled all administrative review deadlines as a result of “operational adjustments due to COVID-19.” *Id.*; First Tolling Memo at 1.

Untimely EOTs are regulated by 19 C.F.R. § 351.302(c), which provides that “[a]n untimely filed extension request will not be con-

sidered unless the party demonstrates that an *extraordinary circumstance* exists.” 19 C.F.R. § 351.302(c) (emphasis added). “An extraordinary circumstance is an unexpected event that: (i) Could not have been prevented if reasonable measures had been taken, and (ii) Precludes a party or its representative from timely filing an extension request through all reasonable means.” *Id.* § 351.302(c)(2). The preamble accompanying the promulgation of this regulation listed examples of “extraordinary circumstances” such as “a natural disaster, riot, war, force majeure, or medical emergency.” See *Extension of Time Limits*, 78 Fed. Reg. 57,790, 57,793 (Dep’t Commerce Sept. 20, 2013) (“*Preamble*”). Commerce further explained in the *Preamble* that circumstances of “insufficient resources, inattentiveness, or the inability of a party’s representative to access the Internet on the day on which the submission was due,” were unlikely to be considered extraordinary circumstances. *Id.*

Commerce’s determination as to whether an extraordinary circumstance exists is evaluated under an abuse of discretion standard. See *Tau-Ken Temir LLP*, 46 CIT at \_\_\_, 587 F.Supp.3d at 1352. “An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on factual findings that are not supported by substantial evidence, or represents an unreasonable judgment in weighing relevant factors.” *Consol. Bearings Co. v. United States*, 412 F.3d 1266, 1268 (Fed. Cir. 2005) (citing *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005)). The primary relevant factors are the circumstances that led to Ajmal’s untimely EOT, and whether Commerce took appropriate steps to determine whether the COVID-19 pandemic constituted an extraordinary circumstance in April 2020.

### A. Ajmal’s Circumstances

In its April 14, 2020, EOT, Ajmal cited “the large size of the response” and “technical difficulties” as reasoning for granting the untimely EOT. April 14, 2020, EOT at 1. Ajmal further clarified that “[a]ll of our staff is working from home and from a laptop as a result of COVID-19” and that the “technical restraints from working from a laptop” had caused the delay. *Id.* After the denial of its untimely EOT by Commerce, Ajmal submitted the First Request to Reconsider and included a detailed breakdown of its efforts to timely file both the EOT and Section A response on April 14, 2020. First Request to Reconsider at 2–4. In the breakdown, Ajmal informed Commerce that Ajmal’s counsel, Barnes, Richardson, and Colburn, LLP (“BRC”), had not received the filing information from Ajmal’s UAE office until 9:00 AM EDT on April 14, 2020, and that the task was primarily left to one

paralegal who was later joined by one unbarred associate. *See id.* According to Ajmal and its counsel, a paralegal for BRC prepared the filing, however, the paralegal's laptop failed to process the task of splitting the filing as required for submission to ACCESS. *See id.* As the laptop was overwhelmed with the initial task, the paralegal was also unable to process an EOT prior to the 5:00 PM deadline. *See id.* After Commerce denied the request to reconsider, Ajmal submitted an even more detailed account, revealing that the partner supervising the matter, Mr. Matthew McGrath, and the paralegal discussed and decided not to call Commerce to inform the case manager of the delay "given the current remote environment." Second Request to Reconsider at 2.

The court has previously upheld decisions of Commerce to reject EOT requests that result in late filings and AFA, after the world had more time to adapt to the COVID-19 pandemic. For example, in *Tau-Ken Temir*, 46 CIT at \_\_\_, 587 F. Supp. 3d at 1364, the court affirmed Commerce's decision to deny a timely EOT filed 70 minutes before a 5:00 PM deadline for submission. Respondents argued that counsel had not received the information necessary to file the submission until 10:58 AM the day it was due, and that they had experienced technical difficulties regarding hyperlinks in ACCESS. *See id.* at 1353–57. As the EOT had been filed prior to the submission deadline, Commerce utilized a more lenient "good cause" standard rather than the extraordinary circumstances standard applicable to Ajmal's EOT. *Id.* at 1351–52. The court nonetheless found Commerce was reasonable in rejecting the EOT as none of the factors presented by the respondent had prevented them from filing an EOT early enough for Commerce to timely process the EOT. *See id.* at 1357–59. It is difficult to extrapolate from one circumstance to the next as the number of EOT's previously requested and Commerce's experience with counsel will differ and minor factual differences may be determinative.

Nonetheless, the circumstances Ajmal and its counsel BRC experienced on April 14, 2020, likely should not have prevented them from filing a timely EOT. BRC could have submitted a timely EOT when it had not yet received the necessary information the day before the submission deadline, or perhaps used the laptop of another staff member to prepare an EOT when the need became apparent. Ajmal asserts these shortcomings are a result of work changes caused by the COVID-19 pandemic. *See* Def. Br. at 7 (explaining the Section A response was the first "significant filing attempted by BRC personnel since commencing remote work operations."). In comparison, on April 14, 2020, both Commerce and Universal were conducting remote

work operations, yet neither had requested nor yet ordered a significant extension to the administrative review deadlines because of that transition. Therefore, without the further context of how extraordinary the COVID-19 pandemic was in April 2020, and Commerce's later actions regarding the tolling of deadlines, Commerce likely would have been reasonable in denying Ajmal's EOT for a lack of an extraordinary circumstance. But the story doesn't end there.

### **B. Commerce's Response to the COVID-19 Pandemic**

Ajmal submitted a request to reconsider the First Denial on April 19, 2020. First Request to Reconsider at 1. Less than a week later, on April 24, 2020, Commerce unilaterally tolled the deadlines for all AD and CVD administrative reviews by 50 days. First Tolling Memo at 1. Commerce stated the tolling was "[i]n response to operational adjustments due to COVID-19 . . ." *Id.* Furthermore, Commerce reasoned that "[t]olling administrative review deadlines makes available resources and personnel needed to continue performing E&C's other functions, such as initiating and conducting AD/CVD investigations in accordance with statutory deadlines, as well as conducting remand proceedings in accordance with deadlines established by the courts." *Id.* at 2.

By taking the extraordinary action of tolling the deadlines for all administrative reviews by 50 days, Commerce arguably recognized "operational adjustments due to COVID-19" during April of 2020 as extraordinary circumstances. *Id.* at 1. The total delay to the investigation by Ajmal, caused by its operational issues due to COVID-19, consisted of less than two hours. The total delay to the review by Commerce, in response "to operational adjustments due to COVID-19," consisted of 50 days or 1,200 hours, plus a subsequent additional 60 days.<sup>1</sup> It was an abuse of discretion for Commerce, on May 7, 2020, with both delays before it, to reason that filing issues due to COVID-19 are so different from operational adjustments due to COVID-19 that they do not constitute sufficient extraordinary circumstances to permit a slightly late filing here to avoid serious consequences. At this point, Commerce should have reconsidered Ajmal's EOT with the new circumstances in mind.

Commerce attempts to distinguish its tolling of deadlines by arguing the tolling was due to "operational adjustments" and "unprecedented workloads." Def. Br. at 13 (quoting *IDM* at 14). This difference is one without meaning as, in Commerce's own words, COVID

<sup>1</sup> First Tolling Memo at 1; Second Tolling Memo at 1. The court is aware that Commerce had cautioned counsel about deadlines prior to the COVID lockdown but finds these circumstances minimally relevant here, given the effect of COVID on all parties.

was responsible for the operational adjustments. See First Tolling Memo at 1–2. In evaluating a delayed update to a filing, the court has found circumstances caused by the COVID-19 pandemic such as “near-total lockdown,” closed offices, and the robustness of “work from home infrastructure” to be relevant to Commerce’s decision making, even months later in the COVID-19 environment (August 2020 as opposed to April 2020). See *Celik Halat ve Tel Sanayi A.S. v. United States*, 46 CIT \_\_, \_\_, 557 F. Supp. 3d 1363, 1376 (2022). These circumstances mirror those experienced by Ajmal in April 2020, and Commerce has failed to show that “operational adjustments” within Commerce resulting in an extraordinary 110-day delay do not stem from the same essential cause. The court is a court of equity, as well as law, yet Commerce asks the court to allow it to enforce its deadlines in the strictest way possible with a seeming disregard for Commerce’s own actions. Commerce must consider the serious consequences it rests upon parties in the light of the allowances it gives itself. Here no prejudice to any party could result because Commerce’s tolling completely prevented it. Further, Commerce’s normal interest in enforcing its deadlines, even as to minor delays, was no longer a concern here.

Accordingly, Commerce abused its discretion in denying Ajmal’s First Request for Reconsideration. The court remands to Commerce to accept and consider Ajmal’s Section A filing and complete the review.

### CONCLUSION

For the foregoing reasons, the court remands to Commerce for a determination consistent with this opinion. The remand shall be issued within 90 days hereof. Comments may be filed 30 days thereafter and any response 15 days thereafter.

Dated: October 28, 2022

New York, New York

*/s/ Jane A. Restani*

JANE A. RESTANI, JUDGE



# Index

*Customs Bulletin and Decisions*  
*Vol. 56, No. 45, November 16, 2022*

## *U.S. Customs and Border Protection*

### *General Notices*

	<i>Page</i>
African Growth and Opportunity Act (AGOA) Textile Certificate of Origin . . . . .	1
Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers . . . . .	4
Cargo Container and Road Vehicle Certification for Transport Under Customs Seal . . . . .	7
Protest (CBP Form 19) . . . . .	10
Administrative Rulings . . . . .	13

## *U.S. Court of International Trade*

### *Slip Opinions*

	<i>Slip Op. No.</i>	<i>Page</i>
Ajmal Steel Tubes & Pipes Industries LLC, Plaintiff, v. United States, Defendant, Wheatland Tube Company, Defendant-Intervenor . . . . .	22-121	19