Slip Op. 03–156

BROTHER INTERNATIONAL CORP., PLAINTIFF, v. UNITED STATES, DEFENDANT.

Ct. No. 00–04–00177

[Plaintiff's Motion for Summary Judgment is denied; Defendant's Cross-Motion for Summary Judgment is granted.]

Decided: December 3, 2003

Barnes, Richardson & Colburn, (*Sandra Liss Friedman*), *Helena D. Sullivan*, for Plaintiff.

Peter D. Keisler, Assistant Attorney General; *Barbara S. Williams*, Assistant Branch Director, International Trade Field Office; (*Amy M. Rubin*), Trial Attorney, Commercial Litigation Branch, Civil Division, Department of Justice; *Yelena Slepak*, Office of Assistant Chief Counsel, United States Customs Service, of Counsel, for Defendant.

OPINION

BARZILAY, JUDGE:

I. INTRODUCTION

This case presents the court with a familiar dilemma: to what extent can the statutory scheme that currently controls the process of importing goods into the United States accommodate changes in the modern practice of international trade logistics as it develops. Before the court are the parties' cross-motions for summary judgment. Plaintiff Brother International Corporation ("Brother" or "Plaintiff") asks this court to hold that the Bureau of Customs and Border Protection of the Department of Homeland Security ("Customs" or "government" or "Defendant")[1] acted improperly in refusing to allow Plaintiff to offset its overpayment against its underpayment of du-

[1] Formerly, the United States Customs Service.

ties when Plaintiff asked for "prior disclosure" treatment under 19 U.S.C. § 1592(c)(4).[2] Accordingly, Plaintiff seeks a refund in the amount of $172,558.79 that it tendered to Customs upon demand and interest accrued on that amount. The government counters that there is no legal basis for permitting such an offset. The issue in this case is whether Customs should have allowed Brother to offset its overpayment against its underpayment with respect to different entries of its merchandise while tendering duties in a prior disclosure situation. The court previously took jurisdiction over this matter pursuant to 28 U.S.C. § 1581(a). *See Brother Intern. Corp. v. United States*, 27 CIT ___ , 246 F. Supp. 2d 1318 (2003) ("*Brother I*"). For the following reasons, the court will not overturn Customs' refusal to allow the offset.[3]

II. BACKGROUND

Plaintiff Brother is the importer of record of the merchandise in question. *Pl.'s Stat. of Material Facts not in Dispute* ("*Pl.'s Facts*") ¶ 1. The merchandise consists of rolls of polyethylene terephthalate ("PET") film sold as refills for printing cartridges used in printers, facsimile and multifunction center machines sold by Brother. *Id.* at ¶ 4. The merchandise entered the United States at the ports of Los Angeles and San Francisco in the period from May 1994 to January 1999. *Id.* at ¶ 5. The merchandise had originally been classified as ribbons similar to typewriter ribbons under subheading 9612.10.1020, HTSUS, or as parts of printers under subheading 8473.30.5000, HTSUS, or as parts of facsimile machines under subheading 8517.90.0800, HTSUS. *Id.* at ¶ 6. In a letter ruling by Customs (NY C82343 dated March 5, 1998), Customs determined that the merchandise was properly classifiable as photographic film under subheading 3702.44.0060, HTSUS (1998), dutiable at 3.7% *ad valorem*. *Id.* ¶ 7; *Def.'s Stat. of Additional Material Facts not in Dispute* ("*Def.'s Facts*") ¶ 2. In December 1998, Plaintiff undertook a review of the entries and realized that its various Customs brokers had at times used incorrect tariff numbers to classify the merchandise and, as a result, duties had been overpaid on some entries and underpaid on other entries. *Aff. of Carolyn Ferrier, Brother's Customs Manager* ("*Ferrier Aff.*") ¶¶ 4, 6. The employee who discovered

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[2] Subsection 1592(c)(4) ("prior disclosure") constitutes an exception to penalties that an importer would otherwise owe due to fraud or grossly negligent or negligent conduct while entering merchandise into the United States. In particular, if the importer discloses such conduct prior to and without knowledge of the commencement of a formal investigation, and tenders duties "of which the United States is or may be deprived" because of the violation, it escapes all or a portion of such penalties.

[3] Those familiar with this matter in its entirety will recognize, as does this court, that it has been exceptionally well lawyered throughout. Nevertheless, the court must interpret the statutory scheme as it is and not as, perhaps, it should be.

the misclassifications had been hired by Brother as its Customs Manager on November 9, 1998. *Id.* at ¶ 1. Prior to her tenure, no one at Brother was responsible to conduct post-entry audits such as the one that led to the discovery. *Id.* at ¶ 3.

On December 23, 1998 and later on January 21 and 22, 1999, Brother submitted letters to Customs informing it of the incorrect classifications and seeking prior disclosure treatment to avoid penalties on underpayments. *Id.* at ¶¶ 9, 10; *Def.'s Facts* ¶ 3. On April 30, 1999, Brother asked Customs to "offset" the overpayments against the underpayments and tendered a check in the amount of $29,125.14 as the net amount of duties due. *Pl.'s Facts* ¶ 10; *Def.'s Facts* ¶ 4. On May 5, 1999, Customs informed Brother that it would not allow the requested offset and demanded the remainder of the underpayments, totaling $172,558.79.[4] *Pl.'s Facts* ¶ 12; *Def.'s Facts* ¶ 5. Specifically, Customs explained:

> Your arguments against U.S. Customs disallowing offsets in prior disclosures have been noted. However, they have not changed our office's position with respect to Section 162.74(c) of the Customs Regulations (19 C.F.R. § 162.74(c) [1999]) which requires that the disclosing party tender any actual loss of duties, taxes and fees either at the time of the claimed prior disclosure, or within 30 days after Customs notifies the person in writing of his or her calculation of the actual loss of duties, taxes and fees. According to 19 C.F.R. § 162.71(a)(1), "actual loss of duties" means the duties of which the Government has been deprived by reason of the violation in respect of entries on which liquidation had become final. Our office maintains that . . . the loss of duties resulting from a violation of 19 U.S.C. § 1592 cannot represent the net difference between overpayments and underpayments relating to the merchandise involved in the violation.

Letter from Eileen C. McCarthy, Fraud Coordinator, Trade Compliance, U.S. Customs Service to Sandra Liss Friedman, Esq., Barnes, Richardson & Colburn (dated May 5, 1999) ("May 5 letter") in *Ferrier Aff. Ex.* 4. Customs added, "If the duties requested are not received within 30 days of this letter, Customs will initiate an action to recover the duties and full penalties under 19 U.S.C. § 1592." *Id.* On May 24, 1999, Brother tendered the entire amount, and on July 19, 1999, filed a protest against such payment. *Pl.'s Facts* at ¶¶ 13, 14. On October 22, 1999, Customs denied the protest.[5] *Id.* at ¶ 15.

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[4] Customs calculated the total amount of underpayments as $201,683.93 and subtracted $29,125.14 Brother already paid on April 30, 1999.

[5] In *Brother I*, denying Customs' contentions, this court determined that there were a valid protest and denial of that protest. Specifically, the court decided that Customs' demand of the additional amount in the May 5 letter was a protestable action because it con-

III. DISCUSSION

A. Summary Judgment.

Summary judgment is appropriate if the court determines that "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." USCIT R. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50 (1986). Here, both parties moved for summary judgment and maintain that there are no genuine issues of material fact to be resolved by a trial. *Pl.'s Mem. of Law in Supp. of Mot. for Summ. J.* ("*Pl.'s Br.*") at 4; *Def.'s Mem. in Supp. of its Cross-Mot. for Summ. J. and in Opp. to Pl.'s Mot. for Summ. J.* ("*Def.'s Br.*") at 5. The court agrees and accordingly finds that summary judgment is appropriate in this case.[6]

B. Plaintiff's Contentions.

Plaintiff Brother presents five substantive arguments in favor of allowing offsets in prior disclosures. First, Brother argues that Customs' refusal to allow an offset is not required by the statute and is solely a policy decision set forth in the Treasury Decision ("T.D.") 79–160, 13 Cust. B. & Dec. 398 (1979), and, therefore, lacks any other legal premise. *Pl.'s Br.* at 5. According to Brother, contrary to the position taken in T.D. 79–160, which rejected offsets in prior disclosures, the legislative history of the Customs Procedure Reform and Simplification Act of 1978, Pub. L. 95–410, ("Simplification Act") shows the clear intention of the Congress to require Customs to "adopt flexible policies which would take into account the totality of an importer's activities." *Id.*; *see also* S. Rep. No. 95–778, *reprinted in* 1978 U.S.C.C.A.N. 2211, 2212 (stating as the objective of the Simplification Act "to permit the establishment of more efficient and flexible procedures" with regard to import transactions). As an example, Brother points to the Senate Report's endorsement of an Automated Merchandise Processing System ("AMPS"), which, had it been adopted, would have allowed importers to make a single payment on various entries and to apply credit balances to amounts due, including penalties.

Further, in its reply, Brother adds that T.D. 79–160 deserves neither the *Skidmore*, nor the *Chevron* deference, as implied by the government's arguments. *Pl.'s Mem. in Opp. to Def.'s Cross-Mot. for*

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stituted a "charge" or "exaction" within the meaning 19 U.S.C. § 1514(a)(3). *Brother I*, 246 F. Supp. 2d at 1323. Customs continues to dispute that there was a valid protest and denial of protest in this case, *Def.'s Response to Pl.'s Stat. of Material Facts not in Dispute* ¶¶ 14, 15, while also allowing that the "case is ripe for summary judgment," *Def.'s Mem. in Supp. of its Cross-Mot. for Summ. J. and in Opp. to Pl.'s Mot. for Summ. J.* ("*Def.'s Br.*") at 5.

[6] As mentioned in the preceding footnote, the material dispute as to whether there were a valid protest and denial of protest has already been decided by the court in *Brother I*.

Summ. J. and in Reply to Def.'s Mem. in Opp. to Pl.'s Mot. for Summ. J. ("*Pl.'s Reply*") at 2–7; *see also Skidmore v. Swift*, 323 U.S. 134 (1944); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Brother explains that Customs' position on offsets was never reduced to a regulation, and that the text of the notice of T.D. 79–160 could not constitute sufficient notice on the issue of offsets because it did not mention the issue. *See* 43 Fed. Reg. 53,453, 53,455 (Nov. 16, 1978) (stating that the proposed section 162.71 of the regulations would define "loss of duties," "actual loss of duties," "potential loss of duties," "noncommercial importation," "clerical error," and "mistake of fact"). Brother further asserts that, even if a type of deference were applicable to T.D. 79–160, the conditions of such deference have not been met under either *Skidmore* or *Chevron*.

Second, Brother maintains that there is no precedent prohibiting the type of offsets requested in this case. *Pl.'s Br.* at 7. To that end, Brother distinguishes this Court's decision in *United States v. Snuggles, Inc.*, 20 CIT 1057, 937 F. Supp. 923 (1996), which rejected offsets, and two subsequent Customs rulings that followed *Snuggles* (HQ 546318 (Dec. 31, 1996) and HQ 547037 (July 12, 1999)). Brother maintains that, unlike here, in these cases either there was no protest, or the case did not involve prior disclosure, or overpayments did not flow from the error that gave rise to the violations. Brother further explains that "[a]llowing an offset in the instant circumstances . . . would not open the floodgates to allow disclosing parties to revisit any errors they have made, since it would be confined to overpayments made in the entries listed in the prior disclosure and arising from the same acts that formed a basis for that disclosure." *Id.* at 10.

Third, Brother points to the Internal Revenue Service's ("IRS") allowance of offsets in similar situations. *Pl.'s Br.* at 10; *see also* 26 U.S.C. § 6402(a) (allowing a "credit [of] the amount of [any] overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax"). According to Brother, methods adopted by a "sister" agency, although not controlling, are relevant to the disposition of a Customs case. Brother implies that the goals of the prior disclosure provision would be better served by allowing offsets because the provision "is meant to encourage voluntary disclosure and thus ensure that the information received by Customs is accurate." *Id.* at 12.

Fourth, Brother contends that Customs' policy position is in fact inconsistent with important goals of recent and past Customs legislation. *Id.* Brother presents that the main objective of the Customs Modernization and Informed Compliance Act, enacted as Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057 (Dec. 8, 1993), ("Mod Act") is to provide incentives to importers to comply with Customs laws and

regulations and to voluntarily reveal violations that have occurred. Brother emphasizes that Customs' policy of disallowing offsets would counter this objective by "discourag[ing] importers from coming forward to report violations because they will more likely than not be forced to needlessly tender additional duties that could be offset if only Customs would allow." *Id*. Brother adds that currently Customs allows offsets during the course of a Customs audit pursuant to section 382 of the Trade Act of 2002, Pub. L. No. 107–210, 116 Stat. 933, 992, *codified at* 19 U.S.C. § 1509(b)(6)(A) (2002). Therefore, Brother contends, importers would likely wait for an audit rather than come forward with a prior disclosure as they would receive more favorable treatment during an audit. According to Brother, this "anomalous" result should be avoided.

Fifth, Brother believes that the "essence of the prior disclosure provision is that the disclosing party must reveal the circumstance of the violation, and make the government whole for any losses suffered as a result of its conduct." *Pl.'s Br*. at 15. Brother asserts that in this case, however, Customs would receive a "windfall" because it would not have been entitled to collect the amounts of underpayments "but for" the revelations of the prior disclosure. *Id*. Brother explains that "had Brother's Customs brokers correctly classified the merchandise covered by the entries listed in that disclosure, Customs would only have received an additional $29,125.14, an amount undisputed by Brother, not the additional $172,558.79 demanded by Customs" in the May 5 letter. *Id*. at 15–16. Brother concludes that it "should not now be penalized by being required to submit an extra $172,558.79 that Customs would never have been entitled to, had these errors not been committed," especially given that Brother acted promptly to rectify the situation upon learning of the incorrect classifications. *Id*. at 16. To support this argument, Brother relies on *Pentax Corp. v. Robinson*, 125 F.3d 1457 (Fed. Cir. 1997), *amended on reh'g*, 135 F.3d 760 (Fed. Cir. 1998), and *United States v. Menard*, 16 CIT 410, 795 F. Supp. 1182 (1992), *aff'd in part, vacated in part*, 64 F.3d 678 (Fed. Cir. 1995), which, while factually different, stand (in the formulation urged by Brother) for the proposition that the government is entitled to collect only that amount of duties which would make it "whole," and nothing in excess of that amount. Brother reiterates that "[i]f the effect of disallowing the offset is to allow the government to collect an amount over and above that of which it has suffered deprivation, that charge or exaction is improper." *Pl.'s Reply* at 13–14.

C. Defendant's Contentions.

The government makes essentially three main arguments in opposition. First, the government urges the court to treat separate provisions of the statute separately. *Def.'s Br.* at 6. In particular, the gov-

ernment urges that section 1592 of Title 19 of the United States Code, which includes the prior disclosure provision in subsection (c)(4), relates only to duties of which the government has been deprived (that is, underpayments) while the refund of overpayments is governed by sections 1514 (providing for the filing of a timely protest within 90 days from the notice of liquidation or the date of protested decision) and 1520(c)(1) (allowing refunds after liquidation due to inadvertent errors within one year of liquidation). *Id.* at 6, 10–12. The government further asserts that "Brother has failed to provide any authority for the proposition that the 'revenue lost' must be a 'net' figure consisting of the total amounts of duties that were underpaid reduced by any amounts that the entity who submitted the false statements overpaid on other transactions." *Def.'s Reply to Pl.'s Response to Def.'s Cross-Mot. for Summ. J.* ("*Def.'s Reply*") at 7. The government believes that a decision in favor of Brother "would eviscerate the provisions of [section] 1592 that permit the assessment of monetary penalties based on the level of culpability." *Id.*

Second, the government argues that a decision in favor of Brother would disturb the finality of the liquidation of Brother's entries. The government explains that, even though the court in *Brother I* had decided that Customs' demand of $172,558.79 constituted a "charge or exaction" within the meaning of subsection 1514(a)(5), "Brother never followed the proper procedures for seeking a refund of any overpayments made at liquidation and, under the plain language of the relevant statute, the liquidations of those entries are now final." *Def.'s Br.* at 13. According to the government, through prior disclosure, Brother attempts "not only to avoid penalties on the numerous entries for which it underpaid duties, but also to recover duties that it overpaid on its now-final entries." *Id.*

Third, the government emphasizes that Brother's overpayments and underpayments were made on different entries, and not on the same entries. *Id.* at 6, 10. To that end, the government explains that the regulations implementing section 1592 (19 C.F.R. §§ 162.70–162.80), while expressly addressing payments to Customs of the "actual loss of duties" in section 162.71, makes no mention of refund by Customs. *Id.* at 6–7. In fact, the government adds that in T.D. 79–160 Customs rejected that particular interpretation.[7] There, Customs explained that "[a]s stated in proposed section 162.71(a)(1), the term 'actual loss of duties' refers to the duties which the Government is deprived of by a violation in respect of a liquidated entry." T.D.

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[7] In a footnote, the government adds that because T.D. 79–160 was adopted after notice and comment it should be afforded the *Skidmore* deference suggested in *United States v. Mead Corp.*, 533 U.S. 218 (2001). *Def.'s Br.* at 7 & n.3.

79–160, 13 Cust. B. & Dec. at 403. While acknowledging that there may not be "actual loss of duties" if there was an overpayment on a particular entry, Customs went on to say that it "does not believe, however, that [the Simplification Act] may be construed as contemplating any reduction in the actual loss of duties on an entry because the violator may have made an erroneous overpayment of duties on *other entries*." *Id.* at 403–4 (emphasis added).

Moreover, the government asserts that "Brother has not explained how offsetting overpayments and underpayments made on different entries months or even years apart furthers" the goal of the Simplification Act "to provide more efficient and flexible procedures for handling customs transactions." *Def.'s Br.* at 8. "On the contrary," the government suggests, "efficiency is much more likely to be achieved by enforcement of specific time limits for finalizing a transaction." *Id.* (emphasis omitted). With respect to the AMPS, the government observes that the system was never adopted and, even if it were, the system would have provided monthly statements on monthly cycles, and would not have allowed offsets on entries that are at times years apart. *Id.* at 9.

Further, the government refers to the 2002 amendment of section 1509 of Title 19 which now allows offsets in Customs' audits. Although not entirely clear, the government's argument seems to be that because Congress expressly allowed offsets only in audits, it did not intend the grant to apply to any other situation besides audits. In a similar vein, the government also argues that because section 1592 is "silent with respect to overpayments," the court "should not read language into a statute without a clear indication of the drafters' intent." *Id.* at 14 (footnote and citations omitted). The government adds that Brother failed to show that the drafters intended the prior disclosure provision "to embrace the situation where an importer determines, years after an entry has liquidated and long after the time for filing a protest has passed," that a mistake had occurred. *Id.* at 15. The government argues that regardless of Brother's contentions, a decision in Brother's favor would spur more litigation or create a greater administrative burden, and additionally provide an incentive to importers to purposefully underpay on some entries so to take advantage of an offset.

Finally, the government's papers contain multiple references to this Court's decision in *United States v. Snuggles*, 20 CIT 1057, 937 F. Supp. 923 (1996). The government's main point is that, even though factually different, the *Snuggles* decision is relevant to this case because it reinforced finality of liquidations, *id.* at 17, and that the *Snuggles* plaintiff, like Brother, did not file a timely protest against liquidation of its entries, *id.* at 12.

D. Analysis.

This is a case of first impression.[8] The issue is whether Customs should have allowed Brother, which sought prior disclosure treatment, to offset its overpayments against its underpayments with respect to multiple entries of Brother's merchandise. The court finds that under the statute Customs was not required to allow the offset advocated by Plaintiff.

Plaintiff's proposed offset of overpayments against underpayments conflicts with the statutory scheme in the following manner. First, by asking for an offset, Plaintiff in effect seeks a refund of overpayments it mistakenly paid to Customs because of the incorrect classification upon entry of the product at issue. However, unfortunately for Brother here, there are two statutory bars to prevent an importer from collecting such a refund from the government. One resides in 19 U.S.C. § 1514(a) which provides that a decision of Customs shall be final regarding the liquidation or reliquidation of an entry unless a protest is filed. The other bars a refund unless Customs is alerted to a mistake of fact prior to one year after the date of liquidation. *See* 19 U.S.C. § 1520(c)(1). In its April 30, 1999 letter tendering the net amount to Customs, Brother included entries dating back to March 26, 1994. *Ferrier Aff. Ex.* 3. Brother failed to protest the liquidation of any of these entries within 90 days from the notice of liquidation as provided in subsection 1514(c). Moreover, by the time Brother asked for an offset, all of the entries for which there was an overpayment had been liquidated more than a year prior to that date (whether that date is April 30, 1999, or May 24, 1999 when Brother tendered the additional $172,558.79 demanded by Customs, or July 19, 1999 when Brother filed a protest).[9] Under either subsection 1514(a) or 1520(c)(1), Brother is not entitled to a refund on such entries.[10]

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[8] This Court's decision in *United States v. Snuggles, Inc.*, 20 CIT 1057, 937 F. Supp. 923 (1996), is not directly on point. In *Snuggles*, the issue of offset involved a single entry and multiple violations, and there was no protest in that case, which was a penalty action brought by the government.

[9] Specifically, the earliest San Francisco entry is dated March 26, 1994, for which Brother overpaid the government $338.37 while the most recent "overpayment" entry at the same port was on June 1, 1997 in the amount of $114.30. The earliest Los Angeles entry, on the other hand, was on May 20, 1994 with a $1,820.77 overpayment and the most recent was on July 16, 1997, for which overpayment was $679.89.

[10] The court notes, however, that there is no such time limitation on Customs to collect past duties owed, either in section 1592 or in subsection 1505(b), which governs collection or refund of duties, fees, and interest due upon liquidation or reliquidation. *See also The Communications, Inc. v. United States*, 18 CIT 358, 361 (1994) (observing that subsection 1505(b) does not specify any time limit on the collection of duties). For similar reasons, Plaintiff's argument that the government should not be able to collect any amount beyond what makes it "whole" fails. Even though the government would not have been entitled to those duties but for Brother's error, it is nevertheless the case that there is no statutory ex-

The fact that Brother sought the refund in the context of a prior disclosure does not alter this conclusion. The prior disclosure provision in subsection 1592(c)(4) does not contemplate overpayments or any refund for such overpayments. Even had Congress provided for offsets under subsection 1592(c)(4), however, it is not entirely clear that the one-year limitation on refunds contained in subsection 1520(c)(1) would have been altered. When Congress amended section 1509 of Title 19 to allow offsets on multiple entries in Customs' audits, it specifically stated that such a grant should not be "construed to authorize a refund not otherwise authorized under section" 1520. Trade Act of 2002, § 382. The court is guided by Congress' clear intention to preserve section 1520 (and the one-year time limit on refunds provided therein) for offsets during audits under section 1509, and cannot, therefore, disturb the time limit set out in section 1520 in a prior disclosure case brought under subsection 1592(c)(4).

Furthermore, allowing the offset advocated by Plaintiff would undermine the current statutory scheme, which continues to be based on the calculation of duties on discrete entries. Plaintiff urges that multiple entries far apart in time should be treated together and that the payments on those entries should be offset against one another. Yet, there is no basis in the statute or regulations to permit an importer, on its own initiative, to determine which of its entries should be treated together, if any, even allowing that its overpayments and underpayments pertained to the same merchandise and arose from the same violation. In T.D. 79–160, adopted in 1979, Customs announced its policy to disallow offsets on multiple entries in prior disclosures under subsection 1592(c)(4) of the statute and section 162.71 of the regulations. Regardless of whether the government's case here is based on this T.D.,[11] it nevertheless represents a position long held by Customs, which the agency continues to defend before this court. The court is aware of Customs' previously stated intention to switch to an account-based system, which will permit debits and credits on accounts, as part of its modernization efforts,[12] and agrees with Plaintiff that such a system is likely to yield ease of administration and accuracy. However, Customs' adoption of an account-based system must await changes in the statute — changes that may be initiated only in the United States Congress. Without an indication from Congress as to the treatment of multiple entries

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ception for the factual situation presented here where Brother did not avail itself of relief provided under either 19 U.S.C. § 1514(a) or § 1520(c).

[11] The government explicitly states that its case is not based on T.D. 79–160 and takes no position on the degree of deference owed to this T.D. *See Def.'s Reply* at 2. On the other hand, Plaintiff urges that no deference is owed because the notice announcing T.D. 79–160 did not cover the issue of offsets. Because this decision does not rest on the deference owed to T.D. 79–160, the court need not reach the "notice" issue.

[12] *See, e.g., ACE & Modernization: Overview of Key Features for the Trade, available at* http://www.customs.gov.

in a prior disclosure and given the agency's opposition, the court will not permit an importer to aggregate its entries in the manner requested here.[13]

Moreover, the court disagrees with Plaintiff's arguments that a decision in favor of Customs in this case would erode the goals of the prior disclosure provision. Plaintiff argues that importers are not likely to come forward if they are not allowed an offset in prior disclosures. However, the reason for importers to make use of the prior disclosure provision is to avoid penalties prior to the commencement of a formal investigation regardless of the existence of potential offsets. In fact, an importer that does not reveal an error it discovered and waits for an audit to be performed runs the risk of incurring penalties.[14]

IV. CONCLUSION

For all the foregoing reasons, Plaintiff's Motion for Summary Judgment is denied, and Defendant's Cross-Motion for Summary Judgment is granted. A separate judgment will be entered accordingly.

Slip Op. 03–157

DUPONT TEIJIN FILMS USA, LP, MITSUBISHI POLYESTER FILM OF AMERICA, LLC, AND TORAY PLASTICS (AMERICA), INC., PLAINTIFFS, v. UNITED STATES, DEFENDANT, AND POLYPLEX CORPORATION LIMITED, DEFENDANT-INTERVENOR.

Consol. Court No. 02–00463

[Plaintiffs' motions for preliminary injunction and to supplement administrative record denied.]

Dated: December 4, 2003

Wilmer, Cutler & Pickering (*John D. Greenwald, Ronald I. Meltzer, Lynn M. Fischer* and *Lisa Pearlman*) for plaintiffs.

Peter D. Keisler, Assistant Attorney General, *David M. Cohen*, Director, *Jeanne E. Davidson*, Deputy Director, Commercial Litigation Branch, Civil Division, United

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[13] For example, the Congress specifically permitted offsets on multiple entries in audits. *See* Trade Act of 2002, § 382; H.R. Conf. Rep. 107–624 (July 26, 2002) (giving an example of offsets on different entries).

[14] For similar reasons, Plaintiff's other policy arguments must fail in the face of statutory requirements. For example, while it may be relevant under certain circumstances, the IRS practices have no direct bearing on Customs' practice given that the two agencies administer two different statutes.

States Department of Justice (*Paul Kovac*), *Scott D. McBride*, Office of the Chief Counsel for Import Administration, United States Department of Commerce, of counsel, for defendant.

Coudert Brothers LLP (*Kay C. Georgi* and *Mark P. Lunn*) for defendant-intervenor.

OPINION

RESTANI, Chief Judge:

Plaintiffs move the court for the entry of a preliminary injunction that (1) enjoins the United States Bureau of Customs and Border Protection ("Customs") from liquidating entries of polyethylene terephthalate film, sheet, and strip ("PET film") produced and/or exported by Polyplex Corporation Ltd. ("Polyplex"), which have been entered or withdrawn from warehouse on or after July 1, 2002, the date of the final amended determination of sales at less than fair value and antidumping duty order, and (2) orders the United States Department of Commerce ("Commerce" or "the Department") to issue instructions suspending liquidation on all such entries or withdrawals from warehouse, pending the final resolution of this action and any appeals thereto. Commerce and Polyplex both oppose the motion primarily on the ground that Plaintiffs have failed to establish the threat of immediate irreparable harm.

Background

On May 16, 2002, the United States Department of Commerce published its final determination that PET film from India is being sold, or is likely to be sold, in the United States at less than fair value ("LTFV"). *Polyethylene Terephthalate Film, Sheet, and Strip From India*, 67 Fed. Reg. 34,899 (Dep't Commerce May 16, 2002) (final) [hereinafter *Final Determination*]. The Department, however, determined to exclude Polyplex from the affirmative determination on the ground that, after adjusting Polyplex's cash deposit to account for export subsidies found in a companion countervailing duty investigation, Polyplex's margin of dumping was, "in reality," *de minimis*. *Id*. at 34,901. Accordingly, the Department issued a negative LTFV determination as to Polyplex. *See id*.

On July 9, 2003, the court remanded the *Final Determination* to Commerce, holding that the Department's decision to exclude Polyplex from the antidumping duty order on the basis of a zero cash deposit rate, despite a 10.34 percent dumping margin, was not in accordance with law. *Dupont Teijin Films USA, LP v. United States*, 273 F. Supp. 2d 1347, 1352 (Ct. Int'l Trade 2003). On August 11, 2003, the Department reversed its LTFV determination as to Polyplex and decided to include Polyplex in the antidumping duty order because its dumping margin was greater than *de minimis*, despite its cash deposit rate of zero. Plaintiffs filed their motion for a

preliminary injunction on September 8, 2003.[1] On October 28, 2003, Plaintiffs filed a motion to supplement the administrative record with Commerce's liquidation instructions to Customs on PET film from India.

Discussion

As an initial matter, the court denies Plaintiffs' motion to supplement the record. The court need not look outside the record to decide whether the motion for preliminary injunction should be granted. Furthermore, Plaintiffs have failed to justify the court's consideration of matters outside the administrative record on incompleteness or any other ground. *See F.lli De Cecco di Filippo Fara San Marino S.p.A. v. United States*, 980 F. Supp. 485, 487 (Ct. Int'l Trade 1997) ("A court will only consider matters outside of the administrative record when there has been a '*strong showing* of bad faith or improper behavior on the part of the officials who made the determination' or when a party demonstrates that there is a '*reasonable basis* to believe the administrative record is incomplete.' ").

Plaintiffs' motion for a preliminary injunction also fails. The court will only grant the "extraordinary remedy" of preliminary injunction if Plaintiffs establish: (1) the threat of immediate irreparable harm; (2) their likelihood of success on the merits; (3) the public interest would be better served by the requested relief; and (4) the balance of hardship on all the parties favors Plaintiffs. *Altx, Inc. v. United States*, 211 F. Supp. 2d 1378, 1380 (Ct. Int'l Trade 2002) (citing *Zenith Radio Corp. v. United States*, 710 F.2d 806, 809 (Fed. Cir. 1983)). This case is factually similar to *Altx* and, based on that precedent, Plaintiffs' motion for a preliminary injunction must be denied.

Just like the plaintiff in *Altx*, Plaintiffs here rely on *Zenith* for the proposition that, because the Department has rendered an affirmative LTFV determination with respect to Polyplex following the court's initial remand, the court must find irreparable harm to the domestic industry. However, "*Zenith* does not apply here because the instant case involves an appeal of [an antidumping] determination in an investigation, rather than an administrative review." *Id*. Furthermore, the court has repeatedly held that liquidation of entries alone does not constitute irreparable harm in the context of a negative LTFV determination even where, as here, the Department reverses itself and renders an affirmative determination on remand. *Sandoz Chemicals Corp. v. United States*, 17 CIT 1061, 1063 (1993);

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[1] The Rules of the United States Court of International Trade generally require that a motion for preliminary injunction to enjoin the liquidation of entries be filed within 30 days of the filing of a complaint. This requirement is waived "for good cause shown." USCIT R. 56.2(a). In the present dispute, neither Polyplex nor Commerce argues that the motion was untimely filed, so the court will address the motion on the merits.

Trent Tube Div., Crucible Materials Corp. v. United States, 14 CIT 587, 588, 744 F. Supp. 1177, 1179 (1990). Plaintiffs must present additional evidence of immediate irreparable harm if their motion is to prevail. *See Altx*, 211 F. Supp. 2d at 1381. Speculative evidence of harm is insufficient. *Trent Tube*, 14 CIT at 589, 744 F. Supp. at 1179.

Applying the foregoing principles to the present case, the court finds that Plaintiffs have failed to establish the threat of immediate irreparable harm if the injunction does not issue. Plaintiffs argue that they will suffer irreparable harm absent preliminary injunctive relief because Polyplex's entries from July 1, 2002 through June 30, 2003 will not be subject to an administrative review. As discussed above, however, liquidation of Polyplex's entries, even in light of the Department's affirmative LTFV determination on remand, is not enough to establish irreparable harm.[2] Plaintiffs have failed to offer any additional evidence of immediate irreparable harm from the liquidation of Polyplex's entries, and, accordingly, their motion fails.

Conclusion

For all of the foregoing reasons, Plaintiffs' motion for preliminary injunction is DENIED. SO ORDERED.

Slip Op. 03–158

BEFORE: SENIOR JUDGE NICHOLAS TSOUCALAS

NSK LTD. AND NSK CORPORATION; NTN CORPORATION, NTN BEARING CORPORATION OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORPORATION, NTN DRIVESHAFT, INC. AND NTN-BOWER CORPORATION; AND TIMKEN U.S. CORPORATION, PLAINTIFFS AND DEFENDANT-INTERVENORS, v. UNITED STATES, DEFENDANT, KOYO SEIKO CO., LTD. AND KOYO CORPORATION OF U.S.A.; AND NACHI-FUJIKOSHI CORP., NACHI AMERICA, INC. AND NACHI TECHNOLOGY, INC., DEFENDANT-INTERVENORS.

Consol. Court No. 98–07–02527

JUDGMENT

This Court, having received and reviewed the United States Department of Commerce, International Trade Administration's ("Commerce") *Final Results of Redetermination Pursuant to Court Remand*

[2] Because Plaintiffs have failed to show irreparable harm, the court need not address whether they have established the other three elements required for the issuance of a preliminary injunction. *Altx*, 211 F. Supp. 2d at 1382 (citation omitted).

("*Remand Results*"), *NSK LTD. v. United States*, 27 CIT ___ , 277 F. Supp. 2d 1332 (2003), comments of NTN Corporation, NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Driveshaft, Inc. and NTN-Bower Corporation and Commerce's response, holds that Commerce duly complied with the Court's remand order, and it is hereby

ORDERED that the *Remand Results* filed by Commerce on September 25, 2003, are affirmed in their entirety; and it is further

ORDERED that since all other issues have been decided, this case is dismissed.

Slip Op. 03–159

BEFORE: SENIOR JUDGE NICHOLAS TSOUCALAS

ELKEM METALS COMPANY AND GLOBE METALLURGICAL INC., PLAINTIFFS, v. UNITED STATES, DEFENDANT, AND RIMA INDUSTRIAL S/A, DEFENDANT-INTERVENOR.

Court No. 02–00232

The United States moves to dismiss the action brought by plaintiffs, Elkem Metals Company and Globe Metallurgical Inc. (collectively "Elkem Metals"), pursuant to USCIT R. 12(b)(1). The United States further requests that, if its motion is denied, the Court extend the time in which responses are due to plaintiffs' motion for judgment upon the agency record. Defendant-intervenor, RIMA Industrial S/A ("RIMA"), subsequently moves to strike portions of plaintiffs' opposition to defendant's motion to dismiss pursuant to USCIT R. 12(f).

Held: For reasons stated below, defendant-intervenor's motion to strike is denied. Defendant's motion to dismiss is denied. Defendant and defendant-intervenor have thirty (30) days from the issue date of this opinion to respond to plaintiffs' R. 56.2 motion.

December 9, 2003

Piper Rudnick LLP (*William D. Kramer*) for plaintiffs, Elkem Metals Company and Globe Metallurgical Inc.

Peter D. Keisler, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Reginald T. Blades, Jr.*); of counsel: *Barbara J. Tsai*, Office of Chief Counsel for Import Administration, United States Department of Commerce, for the United States, defendant.

Greenberg Traurig, LLP (*Philippe M. Bruno*) for defendant-intervenor, RIMA Industrial S/A.

MEMORANDUM OPINION

TSOUCALAS, Senior Judge: The United States moves to dismiss the action brought by plaintiffs, Elkem Metals Company and

Globe Metallurgical Inc. (collectively "Elkem Metals"), pursuant to USCIT R. 12(b)(1). The United States further requests that, if its motion is denied, the Court extend the time in which responses are due to plaintiffs' motion for judgment upon the agency record. Defendant-intervenor, RIMA Industrial S/A ("RIMA"), subsequently moves to strike portions of plaintiffs' opposition to defendant's motion to dismiss pursuant to USCIT R. 12(f).

DISCUSSION

The United States Department of Commerce ("Commerce") contends that this Court lacks subject matter jurisdiction to hear this action because the case is moot. *See* Def.'s Mot. Dismiss Lack of Jurisdiction as Moot & Mot. Suspend Briefing Upon the Merits Pending Decision Upon the Mot. Dismiss ("Def.'s Mot.") at 1. Specifically, Commerce argues that the relief requested by plaintiffs in their 56.2 motion for judgment upon the agency record "would have no practical effect upon the outcome of the administrative review." *Id.* at 4. According to Commerce, "a recalculation of [constructed value ("CV")] to include RIMA's [value-added taxes ("VAT")] input costs in accordance with Elkem's worksheet will not result in any change to the final margin." *Id.* at 3. In support of its contention, Commerce offers an affidavit from the Import Administration certifying that a recalculation of RIMA's CV, which includes the VAT paid by RIMA for certain production units as calculated by plaintiffs, would not result in an above *de minimis* margin. *See* Def.'s Mot at 5; App. Def.'s Mot. Dismiss at App. 1. Accordingly, any decision rendered by this Court on the merits would constitute an advisory opinion. *See* Def.'s Mot. at 4. To support its argument, Commerce cites a string of cases this Court dismissed when the challenge presented could not be redressed in any meaningful way by a Court ruling. *See id.* at 8–9.

Plaintiffs respond that certain calculations made by RIMA, which effect Commerce's calculations regarding CV, are inaccurate. *See* Pls.' Opp'n Def.'s Mot. To Dismiss for Lack of Jurisdiction as Moot ("Pls.' Opp'n Def.'s Mot.") at 7. Specifically, plaintiffs point to three deficiencies. First, plaintiffs challenge the information contained in one of RIMA's exhibits dealing with two types of Brazilian VAT that contain mathematical errors. Plaintiffs maintain that correcting such errors would result in a calculated dumping margin of 0.49 percent, just 0.01 percent below the *de minimis* threshold. *See id.* Second, plaintiffs argue that RIMA's reported values for production inputs, such as electricity and carbon electrodes, are inaccurate, thereby resulting in an understatement of the reported taxes paid on such inputs. *See id.* Third, plaintiffs contend that RIMA failed to report all of the taxes paid on certain inputs for each month covered by the period of review. *See id.* at 8. Plaintiffs argue that if RIMA's tax calculations are adjusted to eliminate all these errors, Commerce

would calculate a dumping margin in excess of the 0.50 percent *de minimis* threshold. *See id.* at 8–9.[1]

> Plaintiffs also argue that Commerce's refusal to include the VAT paid on inputs in CV was not based on the issue it is now raising—whether the VAT amount that must be included in CV generates a dumping margin. Instead, [Commerce's] decision was based on a policy under which it includes VAT in CV only if the amount of VAT paid on inputs exceeds the amount of VAT collected on domestic sales of the final product.

Id. at 13. Plaintiffs point out that this policy was central to Commerce's decision not to include the VAT paid on inputs in the calculation of CV in both the preliminary and final results. According to plaintiffs, this policy has been rejected by the Court of Appeals for the Federal Circuit ("CAFC") in *Aimcor v. United States*, 141 F.3d 1098, 1109 (Fed. Cir. 1998), and *Camargo Correa Metais, S.A. v. United States*, 200 F.3d 771, 774 (Fed. Cir. 1999).

Finally, plaintiffs alternatively argue that this case is not moot because the issue is capable of repetition, yet evades review and, therefore, fits the mootness exception doctrine. *See* Pls.' Opp'n Def.'s Mot. at 15. Plaintiffs note that "the issue has already arisen in at least four segments of the antidumping proceeding on silicon metal from Brazil (the original investigation and the 1996–97, 1997–98, and 1999–2000 administrative reviews)." *Id.* at 16. Moreover, since Commerce revoked the order on silicon metal from Brazil on December 17, 2002, *see Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part of Silicon Metal from Brazil*, 67 Fed. Reg. 77,225, based on a calculation of zero dumping margin for three consecutive reviews, this issue evades review.[2] *See* Pls.' Opp'n Def.'s Mot. at 16.

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[1] Plaintiffs also note that Commerce was notified of these deficiencies during the administrative review, but that Commerce took no steps to verify the information reported by RIMA. *See* Pls.' Opp'n Def.'s Mot. at 9. In its reply brief, Commerce argues that Elkem Metals did not raise this issue during the administrative review. *See* Def.'s Reply Pls.' Opp'n Def.'s Mot. Dismiss Lack of Jurisdiction as Moot ("Def.'s Reply") at 4. The Court refers Commerce to the administrative record, which documents written comments to Commerce regarding fundamental problems in the VAT amount reported by RIMA. *See* Confidential App. Pls.' Br. Supp. Mot. J. Upon the Agency R. ("Pls.' App.") at App. 6.

[2] This Court agrees with Commerce that the exception to the mootness doctrine applies to the legal issue being litigated, that is whether Commerce must include the VAT paid on inputs in its CV calculation, and not to the narrow effect the issue has on a particular party. *See Verson v. United States*, 22 CIT 151, 153–55, 5 F. Supp. 2d 963, 965–66 (1998) (stating that "[a]n antidumping determination is not of too short a duration to prevent complete judicial review" and holding that "the issue raised is likely to be subject to agency action in the future").

A. RIMA's Motion to Strike Portions of Plaintiffs' Opposition to Defendant's Motion to Dismiss this Action as Moot

The Court must first address RIMA's motion to strike the pleadings before it proceeds to consider defendant's motion to dismiss. Generally, motions to strike are considered "disfavored" or "extraordinary" remedies. *See Acciai Speciali Terni S.p.A. v. United States*, 24 CIT 1211, 1212–13, 120 F. Supp. 2d 1101, 1106 (2000); *Hynix Semiconductor, Inc. v. United States*, 2003 Ct. Intl. Trade LEXIS 127, Slip Op. 03–128, at *3 (CIT Sept. 30, 2003). The Court will grant a motion to strike only when there is a "flagrant disregard of the rules of court." *Jimlar Corp. v. United States*, 10 CIT 671, 673, 647 F. Supp. 932, 934 (1986). Accordingly, the court "will not grant motions to strike unless the brief demonstrates a lack of good faith, or that the court would be prejudiced or misled by the inclusion in the brief of the improper material." *Id.* Plaintiffs did not demonstrate bad faith nor is the Court prejudiced or misled by the brief supporting plaintiffs' motion for judgment upon the agency record. Therefore, the Court denies RIMA's motion.

B. Defendant's Motion to Dismiss this Case as Moot

The defendant's USCIT R. 12(b)(1) motion to dismiss focuses on whether the Court has subject matter jurisdiction to hear this case. The Court must determine "whether the moving party challenges the sufficiency of the pleadings or the factual basis underlying the pleadings." *Corrpro Cos. v. United States*, 2003 Ct. Intl. Trade LEXIS 60, Slip Op. 03–59, at *4 (CIT June 4, 2003). Since the defendant challenges the sufficiency of the pleadings, the Court must construe such pleadings in a light most favorable to plaintiffs. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (stating that "it is well established that, in passing on a motion to dismiss . . . on the ground of lack of jurisdiction over the subject matter[,] . . . the allegations of the complaint should be construed favorably to the pleader"). Although the plaintiffs bear the burden of establishing jurisdiction because they seek to invoke this Court's jurisdiction, *see Old Republic Ins. Co. v. United States*, 14 CIT 377, 379, 741 F. Supp. 1570, 1573 (1990) (citations omitted), the Court's role in determining whether to dismiss this case is simply to decide whether the "plaintiff has sufficiently alleged a basis of subject matter jurisdiction." *Nippon Steel Corp. v. United States*, 2001 Ct. Intl. Trade LEXIS 161, Slip Op. 01–153, at *5–*6 (CIT Dec. 28, 2001)(quotation and citation omitted).

The issue raised in plaintiffs' 56.2 motion is whether Commerce erred in excluding the Brazilian VAT paid by RIMA on inputs used to produce exported silicon metal from Commerce's calculation of CV. *See* Mot. J. Upon the Agency R. at 1; "Pls.' Opp'n Def.'s Mot." at 2–4; Pls.' Opp'n Def.-Intervenor's Mot. Strike R. Portions Pls.' Opp'n Def.'s Mot. Dismiss at 3. The administrative review challenged by plaintiffs encompasses imports of silicon metal from Brazil during

the period of review ("POR") from July 1, 1999, through June 30, 2000. *See Final Results of Antidumping Duty Administrative Review of Silicon Metal from Brazil* ("*Final Results*"), 67 Fed. Reg. 6,488 (Feb. 12, 2002). On August 6, 2001, Commerce published the preliminary results of the instant reviews and found that the silicon metal being produced by RIMA was not being sold at less than fair value. *See Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part on Silicon Metal From Brazil* ("*Preliminary Results*"), 66 Fed. Reg. 40,980. During the preliminary review, Elkem Metals first raised the issue presented in plaintiffs' motion for judgment upon the agency record. *See* Pls.' App. at App. 6 (proprietary version). On February 12, 2002, Commerce published the *Final Results* finding again that silicon metal from Brazil produced by RIMA was not being sold at less than fair value.

Section 1677b(e) of Title 19 of the United States Code reads, in pertinent part, that in the calculation of CV, "the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials." 19 U.S.C. § 1677b(e) (2000). The CAFC first touched upon this issue in *Aimcor*, 141 F.3d at 1109 n.19, and held that "the Brazilian system of keeping a running total of taxes paid and collected and then 'settling up' monthly with the Brazilian government does not seem[ ] to meet the literal requirements of the statute in terms of refund and remittance." Subsequently, in *Camargo*, 200 F.3d at 774, the CAFC held that under the plain meaning of 19 U.S.C. § 1677b(e), the VAT must be included in the calculation of the CV of exported products unless such taxes are "remitted or refunded" upon exportation. In light of these holdings, the Court agrees with plaintiffs that Commerce's motion to dismiss is merely an attempt to avoid responding to plaintiffs' arguments on the merits.

Commerce's arguments in support of the motion to dismiss rest on a single reference in plaintiffs' moving papers. Mainly, Commerce focuses on plaintiffs' summary of the VAT that plaintiffs allege should have been used in Commerce's calculation of CV that is attached to plaintiffs' moving brief as a worksheet. Although plaintiffs represent that this worksheet reflects the amount of the VAT that should have been included in the calculation of RIMA's CV, the Court is not restricted from considering plaintiffs' argument from subsequent papers. When this exhibit was challenged by Commerce, plaintiffs clarified that the figures provided in the worksheet represented only an "estimate." The arguments subsequently raised by plaintiffs regarding the above *de minimis* dumping margin that would result from Commerce's correction of certain additional errors sufficiently fulfill plaintiffs' burden of establishing jurisdiction. Commerce does

not submit one bit of evidence to rebut plaintiffs' allegations with regard to such errors, and since the allegations of the complaint should be construed in a light most favorably to the pleader, defendant's motion to dismiss is denied.

CONCLUSION

RIMA's motion to strike portions of plaintiffs' opposition to defendant's motion to dismiss is denied. Since plaintiffs sufficiently met their burden to prove this Court has jurisdiction to hear this case, defendant's motion to dismiss is also denied.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO./DATE JUDGE	*PLAINTIFF*	*COURT NO.*	*ASSESSED*	*HELD*	*BASIS*	*PORT OF ENTRY & MERCHANDISE*
C03/51 11/3/03 Tsoucalas, J.	West Bend Co.	01–00856	8516.72.00 5.3%	8516.60.40 Free of duty	Agreed statement of facts	Chicago Electro-thermic appliances
C03/52 11/5/03 Pogue, J.	Nine West Dist. Corp.	03–00004	6404.20.40 10%	6404.20.60 37.5% Parties agreed to settle case on basis of Customs refunding 65% of all duties paid by plaintiff—$40,541.23	Agreed statement of facts	Philadelphia Women's footwear
C03/53 11/5/03 Pogue, J.	Odme, Inc.	02–00208	8479.89.97 2.5% 8477.10.90 3.1%	8520.90.00 Free of duty	Agreed statement of facts	Houston Miniliner Replication System
C03/54 11/5/03 Pogue, J.	Odme, Inc.	02–00210	8479.89.97 2.5% 7010.93.30 5.2% 8417.80.00 3.9% 8543.30.00 2.6% 8415.81.00 1.7%	9010.50.60 Free of duty	Agreed statement of facts	Los Angeles Dual Beam Recording System and AM–200 Automatic Master Recording System
C03/55 11/5/03 Restani, C.J.	SZ Test-systeme, Inc.	01–00726	9030.89.00 1.7%	9030.82.00 Free of duty	Agreed statement of facts	New York High-speed mixed signal test system, known as the SZ Test-systeme, Inc.
C03/56 11/5/03 Pogue, J.	Toolex USA, Inc.	01–01026	9013.80.90 4.5%	9010.50.60 Free of duty	Agreed statement of facts	Los Angeles Deep UV Master Recording System
C03/57 11/5/03 Pogue, J.	Toolex USA, Inc.	02–00146	8477.40.00 3.4%	8520.90.00 1.6%	Agreed statement of facts	Los Angeles Miniliner Replication System

DECISION NO./DATE JUDGE	*PLAINTIFF*	*COURT NO.*	*ASSESSED*	*HELD*	*BASIS*	*PORT OF ENTRY & MERCHANDISE*
C03/58 11/5/03 Pogue, J.	Toolex USA, Inc.	02–00257	9013.80.90 4.5%	9010.50.60 Free of duty	Agreed statement of facts	Los Angeles Laser Beam Recorder and AM–200 Automatic Master Recording System
C03/59 11/5/03 Pogue, J.	Toolex USA, Inc.	02–00546	8479.89.97 2.5% 8477.90.85 3.1%	9010.50.60 Free of duty	Agreed statement of facts	Port Huron Direct Stamper Master Recording System and AM–200 Automatic Master Recording System
C03/60 11/5/03 Pogue, J.	Toolex USA, Inc.	03–00041	9013.80.90 4.5% 9031.80.80 1.7% 8415.81.00 1%	9015.50.60 Free of duty	Agreed statement of facts	Huntsville Direct Stamper Master Recording System
C03/61 11/6/03 Eaton, J.	Toolex USA, Inc.	99–12–00770	8479.89.95 3.2% 8477.10.80 3.6%	8520.90.00 2.3%	Agreed statement of facts	Chicago Multiliner Replication System
C03/62 11/6/03 Eaton, J.	Toolex USA, Inc.	00–02–00057	8477.10.90 3.3% 8479.89.97 2.7%	8520.90.00 0.8%	Agreed statement of facts	San Francisco FI–FO Replication System
C03/63 11/6/03 Eaton, J.	Toolex USA, Inc.	00–02–00058	8477.10.90 3.4%	8520.90.00 1.6%	Agreed statement of facts	San Francisco Miniliner Replication System
C03/64 11/6/03 Eaton, J.	Toolex USA, Inc.	01–00971	8479.89.97 2.7% 8477.10.90 3.3%	8520.90.00 0.8%	Agreed statement of facts	Los Angeles Miniliner Replication System
C03/65 11/6/03 Eaton, J.	Toolex USA, Inc.	03–00122	8479.89.97 2.7%	9010.50.60 Free of duty	Agreed statement of facts	Los Angeles AM–100 Automatic Master Recording System