

U.S. Customs and Border Protection



DEPARTMENT OF THE TREASURY

19 CFR PART 12

CBP DEC. 24-15

RIN 1515-AE83

IMPOSITION OF IMPORT RESTRICTIONS ON ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIAL OF YEMEN

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect the continuation of import restrictions on certain categories of archaeological and ethnological material of Yemen, pursuant to an agreement between the United States and the Republic of Yemen (the Agreement). The restrictions were originally imposed on an emergency basis by CBP Decision 20-01 on February 5, 2020, and will now continue, with various amendments, through April 15, 2029. The Designated List of archaeological and ethnological material of Yemen to which the restrictions apply is reproduced below, with certain modifications to make it consistent with the Agreement.

DATES: Effective on September 10, 2024.

FOR FURTHER INFORMATION CONTACT: For legal aspects, W. Richmond Beevers, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325-0084, ot-otrrculturalproperty@cbp.dhs.gov. For operational aspects, Julie L. Stoeber, Chief, 1USG Branch, Trade Policy and Programs, Office of Trade, (202) 945-7064, 1USGBranch@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (CPIA), which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)) (Convention), allows for the conclusion of an agreement between the United States and another party to the Convention to impose import restrictions on eligible archaeological and ethnological material. In certain limited circumstances, the CPIA authorizes the imposition of restrictions on an emergency basis (19 U.S.C. 2603). The emergency restrictions are effective for no more than five years from the date of the State Party's request and may be extended for three years where it is determined that the emergency condition continues to apply with respect to the covered material (19 U.S.C. 2603(c)(3)). These restrictions may also be continued, in whole or in part, pursuant to an agreement concluded within the meaning of the CPIA (19 U.S.C. 2603(c)(4)).

On February 7, 2020, U.S. Customs and Border Protection (CBP) published a final rule, CBP Decision (CBP Dec.) 20–01, in the **Federal Register** (85 FR 7209), which amended § 12.104g(b) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(b)) to reflect the imposition of import restrictions on certain archaeological material and ethnological material of Yemen under the emergency protection provisions of the CPIA.

Following imposition of the emergency import restrictions, the United States entered into a bilateral agreement with the Republic of Yemen¹ under the CPIA to continue the emergency import restrictions on certain archaeological and ethnological material of Yemen through April 15, 2029, with modifications to the Designated List. This period may be extended for additional periods, each extension not to exceed 5 years, if it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a))).

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import

¹ Due to an ongoing conflict within Yemen, this rule shall use the “Republic of Yemen” to denote the State party to the agreement and “Yemen” when discussing the archaeological/ethnological material and cultural heritage subject to the import restrictions.

restrictions under 19 U.S.C. 2602(a)(2). On November 18, 2022, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological and ethnological material originating in Yemen that is described in the Designated List set forth below in this document.

These determinations include the following: (1) that the cultural patrimony of Yemen is in jeopardy from the pillage of archaeological material, dating from approximately 200,000 B.C. to A.D. 1773, and ethnological material representing Yemen's cultural heritage, ranging in date from approximately A.D. 1517 through 1918 (19 U.S.C. 2602(a)(1)(A)); (2) that the Republic of Yemen Government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material included in the determinations meets the statutory definition of "archaeological or ethnological material of the State Party" (19 U.S.C. 2601(2)).

The Agreement

On August 30, 2023, the Governments of the United States and the Republic of Yemen signed a bilateral agreement, "Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Yemen Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Yemen," (the Agreement) pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement entered into force on April 15, 2024, following the exchange of diplomatic notes, and modifies the previously imposed emergency import restrictions on archaeological material dated from approximately 200,000 B.C. to A.D. 1773, as well as certain ethnological material of Yemeni cultural heritage from A.D. 1517 through 1918. A list of the categories of archaeological and ethnological material subject to the import restrictions is set forth later in this document.

Restrictions and Amendment to the Regulations

Import restrictions on the archaeological and ethnological material of Yemen previously reflected in § 12.104g(b) will be continued through the Agreement without interruption. Accordingly, § 12.104g(a) of the CBP regulations is being amended to indicate that restrictions have been imposed pursuant to the Agreement, and the emergency import restrictions on certain categories of archaeological and ethnological material of Yemen are being removed from § 12.104g(b), as those restrictions are now encompassed in § 12.104g(a). Pursuant to the Agreement, and consistent with the CPIA, the Designated List originally published with the emergency restrictions in CBP Dec. 20–01 is being amended to correct certain typographical errors, to extend the date range for archaeological material to A.D. 1773, to clarify certain categories of archaeological material, to add the subcategory “Inscribed Documents” to the list of archaeological materials, to clarify that the ethnological material listed excludes Jewish ceremonial and ritual objects and manuscripts, and to reorganize the list of ethnological material by type of object instead of by material.

Designated List of Archaeological and Ethnological Material of Yemen

The Agreement between the United States and the Republic of Yemen includes, but is not limited to, the categories of objects described in the Designated List set forth below.

The Designated List includes archaeological and ethnological material from Yemen. The archaeological material in the Designated List includes, but is not limited to, objects made of stone, metal, ceramic, clay, glass, faience, semi-precious stone, paintings, plaster, textiles, leather, parchment, paper, wood, bone, ivory, shell, human remains, and/or other organic materials dated from approximately 200,000 B.C. to A.D. 1773. The ethnological material in the Designated List includes, but is not limited to, architectural materials, manuscripts, and religious and ceremonial objects from approximately A.D. 1517 to 1918. This would exclude Jewish ceremonial or ritual objects and manuscripts. The Designated List is representative only. Any dates and dimensions are approximate. For the reader’s convenience, CBP is reproducing the Designated List contained in CBP Dec. 20–01 in its entirety with the previously detailed modifications.

Categories of Archaeological and Ethnological Material

I. Archaeological Material

- A. Stone
- B. Metal
- C. Ceramic and Clay
- D. Glass, Faience, and Semi-Precious Stone
- E. Painting
- F. Plaster
- G. Textiles
- H. Leather, Parchment, and Paper
- I. Wood, Bone, Ivory, Shell, and Other Organics
- J. Human Remains

II. Ethnological Material

- A. Architectural Elements
- B. Manuscripts
- C. Religious and Ceremonial Objects

I. Archaeological Material

Restricted archaeological material from Yemen includes the categories listed below, ranging in date from approximately 200,000 B.C. to A.D. 1773 and representing the following periods and cultures: Paleolithic, Neolithic, South Arabian, Abyssinian, Sasanian, and Islamic (including but not limited to Umayyad, Abbasid, Ziyadid, Zaydi, Najahid, Sulaihid, Zurayid, Ayyubid, Rasulid, and Tahirid). The following list is representative only.

A. *Stone*

1. *Architectural Elements*—Primarily in limestone, marble, and sandstone; including, but not limited to, blocks from walls, floors, and ceilings; columns, capitals, bases, lintels, jambs, friezes, and pilasters; doors, door frames, and window fittings; engaged columns, altars, prayer niches, screens, fountains, mosaics, and inlays. May be plain, molded, carved, or inscribed in various languages and scripts. Common decorative motifs include ibex heads and full animals, oxen or bull heads, rosettes, geometric designs, and curvilinear vine and floral patterns; may be incised or carved in relief. Approximate dates: 1200 B.C. to A.D. 1773.

2. *Non-architectural Relief Sculpture*—In alabaster, limestone, marble, calcite, and other kinds of stone. Types include, but are not limited to, carved slabs and plaques, funerary and votive stelae, and bases and base revetments. These may be painted, incised, or carved with relief sculpture, decorated with moldings, and/or carry dedicatory or funerary inscriptions. South Arabian Period styles include, but are not limited to, face plaques and stelae; may be combined with ceramic or plaster sculpture; may be inscribed or painted. Common decorative motifs either incised or in high relief include oxen or bull heads, other animals, mythological creatures, human figures, which are usually clothed, and vegetative and floral patterns; may be inscribed in South Arabian script. Approximate dates: 1200 B.C. to A.D. 570.

3. *Statuary*—Primarily in alabaster, but also in calcite, limestone, sandstone, softstone (chlorite and others), and marble. Large- and small-scale, including, but not limited to, deities; human figures, which are usually clothed; animals such as bulls, ibex, and camels; and hybrid or mythological creatures. May be inscribed in South Arabian script. Includes fragments of statues. Some pieces may also include different material types, such as multiple types of stone, metal staffs, shell or bone eyes, and metal, glass, and semi-precious stone jewelry inlay. Approximate dates: 4000 B.C. to A.D. 570.

4. *Vessels and Containers*—Primarily in alabaster, softstone (chlorite and others), and limestone; may also be marble, basalt, or other stone. Vessels may be conventional shapes such as bowls, cups, jars, jugs, platters, and flasks, or shapes such as smaller funerary urns and incense burners. Common forms include, but are not limited to:

a. South Arabian Period containers for unguents, powders, and liquids in all shapes and sizes. They are flat-bottomed and often have lids. Some pieces have protruding pierced lug handles, which may or may not be in the shape of an animal, usually a bull or ibex. Vessels may be otherwise decorated or inscribed with South Arabian, or other script. Other forms include, but are not limited to, pedestal dishes, bowls, saucers, and three-legged cosmetic palettes, as well as small, rectangular, square-sided boxes, usually decorated with bull's heads, used as containers for smaller bottles. Incense burners from the South Arabian period are usually cuboid and decorated with astral symbols or South Arabian script. Includes miniature vessels and incense burners. Approximate dates: 1200 B.C. to A.D. 570.

b. Stone vessels continue in similar form through the Sasanian and Islamic Periods, particularly in softstone (chlorite and others) and alabaster. Includes all vessel types and lamps, usually with geometric

incised decoration; may be inscribed with Arabic or other script. Approximate dates: A.D. 570 to 1773.

5. *Furniture*—In marble, alabaster, and other stone. May include thrones, tables, and other examples. Also includes furniture elements such as legs and feet that may have been attached to a wooden frame; may be funerary. May include South Arabian Period libation and sacrificial altars or tables, which are oblong or square slabs with raised rims; altars have a run-off channel for liquid, usually in the form of an animal, such as a bull's head or ibex. Includes miniature tables. Approximate dates: 1200 B.C. to A.D. 1773.

6. *Tools and Weapons*—In flint/chert, obsidian, limestone, tuff, basalt, and other stones. Chipped stone types include, but are not limited to, blades, borers, scrapers, sickles, cores, and arrowheads. Ground stone types include, but are not limited to, grinders (*e.g.*, mortars, pestles, millstones, whetstones), choppers, axes, celts, hammers, mace heads, and weights. Approximate dates: 200,000 B.C. to A.D. 1773.

7. *Jewelry, Seals, and Beads*—In marble, limestone, and various semi-precious stones, such as rock crystal, amethyst, garnet, jasper, agate, steatite, and carnelian. Seals or intaglios (small devices with at least one side engraved with a design for stamping or sealing) may be engraved with animals, human figures, and/or inscriptions in various languages. Beads include cylindrical, spherical, conical, disc, and other types; may have cut, incised, or raised decoration. Types include, but are not limited to, amulets, bracelets, and pendants. Approximate dates: 8000 B.C. to A.D. 1773.

B. Metal

1. *Non-Architectural Relief Sculpture*—Types include cast relief plaques or tablets, appliques, stelae, and masks; often in bronze or copper. Decoration may include human and animal figures, geometric, and floral motifs. May be inscribed/cast in South Arabian, Arabic, or other script. Approximate dates: 1200 B.C. to A.D. 1773.

2. *Statuary*—Primarily in copper, bronze, silver, or gold; includes fragments of statues. Range from larger-than-life-size to small figurines; forms include, but are not limited to, human figures, which may be clothed or not; animals such as camels, ibex, oxen, bulls, and lions; mythological creatures/figures; and trophies such as votive hands. May be painted or inscribed/cast in relief in South Arabian, Arabic, or other script. Approximate dates: 1200 B.C. to A.D. 570.

3. *Vessels and Containers*—Primarily in copper, bronze, or iron; Islamic Period includes more examples in silver and gold. May include forms such as bowls, cups, jars, jugs, strainers, buckets, caul-

drons, boxes, oil lamps, incense burners, and scroll or manuscript containers; may occur in the shape of an animal or part of an animal. May be miniature. Decoration may include human or animal figures, or geometric or floral motifs, incised or in relief. Incense burners may be square or cylindrical; front decorated with astral symbols and/or animals. May be inscribed/cast in relief in South Arabian, Arabic, or other script. Approximate dates: 1200 B.C. to A.D. 1773.

4. *Furniture*—Primarily in bronze and iron; may include thrones, tables, and other examples. Includes pieces of furniture and decorative fittings such as legs and feet that may have been attached to a wooden frame; or thin metal sheets with engraved or impressed designs. Approximate dates: 1200 B.C. to A.D. 1773.

5. *Tools and Instruments*—In copper, bronze, iron, silver, gold, and other metals. Types include, but are not limited to, hooks, weights, axes, scrapers, trowels, keys, ladles, tools of craftspeople such as carpenters, masons, and metal smiths. Approximate dates: 3000 B.C. to A.D. 570.

6. *Weapons and Armor*—Primarily in copper, bronze, and iron. Body armor, such as helmets, cuirasses, shin guards, shields, and horse armor; often decorated with elaborate engraved, embossed, or perforated designs. Launching weapons (spears, javelins, socketed arrowheads); hand-to-hand combat weapons (swords, daggers, jambiyas); and sheaths. Approximate dates: 1200 B.C. to A.D. 1773.

7. *Jewelry and Other Items for Personal Adornment*—In copper, iron, bronze, silver, gold, and other metals. Metal can be inlaid with materials such as colored stones and glass. Types include, but are not limited to, necklaces, amulets and pendants, rings, bracelets, anklets, earrings, diadems, wreaths and crowns, beads, buttons, purses, belts, belt buckles, mirrors, and make-up accessories and tools. Approximate dates: 1200 B.C. to A.D. 1773.

8. *Seals and Stamps*—Primarily in lead, tin, copper, bronze, silver, and gold. Types include, but are not limited to, rings, amulets, and seals with a shank or handle; designs may include animals, human figures, and/or inscriptions in various languages. Approximate dates: 1200 B.C. to A.D. 1773.

9. *Coins*—A reference book for ancient, pre-Islamic material in Yemen is M. Huth, *Coinage of the Caravan Kingdoms: Ancient Arabian Coins from the Collection of Martin Huth*, New York, 2010, pp. 68–152. A reference book for Islamic coinage to A.D. 1773 is S. Album, *Checklist of Islamic Coins*, Santa Rosa, 2011, pp. 116–127. Some of the best-known types are described below:

a. South Arabian Period—In gold, silver, and bronze/copper, with units ranging from tetradrachms down to various fractional levels.

i. Earliest coins from Yemen are imitations of silver tetradrachms from Athens, featuring a bust of Athena on the obverse and an owl on the reverse. The style of these imitations is distinctive, and they are usually marked with South Arabian monograms or graffiti. Approximate dates: 500 B.C. and later.

ii. Mineans produced schematic imitations of the Athenian coinage; these coins have angular shapes, often triangular. Style is distinctive with monograms with South Arabian letters. Approximate date: 200 B.C.

iii. Sabaeans struck distinctive local imitations of Athenian tetradrachms, with or without monograms, often with the curved symbol of Almaqah to the right of the owl, and of smaller units than previously. In the 1st century A.D., the head of Athena is replaced with a male bust resembling Augustus; owl on the reverse continues, as do monograms and the curved symbol. In the 2nd and 3rd centuries A.D., a beardless male head appears on the coins with the curved symbol, and a facing bucranium (a bull's head) appears on the reverse with the curved symbol and monograms. Approximate dates: 400 B.C. to A.D. 300.

iv. Himyarite coins feature beardless male heads on the obverse coupled with bearded male heads on the reverse. Various South Arabian monograms appear on the coins. Rulers include, but are not limited to, Yuhabir, Karib'il Yehun'im Wattar, Amdan Yuhagbid, Amdan Bayan, Tha'ran Ya'ub, Shamnar Yuhan'am, and unknown kings. Approximate dates: 110 B.C. to A.D. 200.

v. Qatabanians also produced imitations of Athenian coins in the 2nd to 4th century B.C., with or without monograms; distinctive style. From the 2nd century B.C. to the 2nd century A.D., the head of Athena is replaced with male ruler portraits, including, but not limited to, those of Yad'ab Dhubyan Yuhargib, Dhub, Hawfi'amm Yuhan'am III, Shahr Yagul, Waraw'il Ghaylan, Shahr Hilal, Yad'ab Yanaf, and various unknown rulers. Reverses of early types have the owl, while later types have a second portrait on the reverse. Approximate dates: 400 B.C. to A.D. 200.

vi. Bronze coins from Hadhramaut have radiate male portraits in a circle on the obverse and a standing bull on the reverse; South Arabian symbols appear. Approximate dates: A.D. 200 to 400.

vii. Various South Arabian types imitate Athenian coins, Hellenistic Alexander tetradrachms with a head of Herakles on the obverse and Zeus seated on the reverse, and Ptolemaic coins with a cornucopia on the reverse. Style is distinctive; designs are accompanied by South Arabian monograms.

b. Islamic Period—In gold, silver, and bronze. Including anonymous mints in Yemen and coins of unknown rulers attributed to Yemen. Non-exclusive mints are the primary manufacturers of the listed coins, but there may be other production mints.

i. Abbasid coins struck in gold, silver, and bronze, at non-exclusive mints San'a, Zabid, 'Adan, Dhamar, 'Aththar, and Baysh. Approximate dates: A.D. 786 to 974.

ii. Coins of the Amirs of San'a, struck in gold, at the mint of San'a. Approximate dates: A.D. 909 to 911.

iii. Rassid (1st period) coins struck in gold and silver at Sa'ida, San'a, Tukhla', and 'Aththar. Approximate dates: A.D. 898 to 1014.

iv. Coins of the Amirs of Yemen, struck in silver, at an uncertain mint. Approximate dates: A.D. 1000 to 1100.

v. Coins of the Amirs of 'Aththar, struck in gold, at the mint of 'Aththar. Approximate dates: A.D. 957 to 988.

vi. Tarafid coins, struck in silver, at the mint of 'Aththar. Approximate dates: A.D. 991 to 1004.

vii. Ziyadid coins, struck in gold and silver, at non-exclusive mint Zabid. Approximate dates: A.D. 955 to 1050s.

viii. Khawlanid coins, struck in silver, at the mint of San'a. Approximate dates: A.D. 1046 to 1047.

ix. Najahid coins, struck in gold, at the mints Zabid and Dathina. Approximate dates: A.D. 1021 to 1158.

x. Sulaihid coins, struck in gold and debased silver, at non-exclusive mints Zabid, 'Aththar, 'Adan, Dhu Jibla. Approximate dates: A.D. 1047 to 1137.

xi. Zuray'id coins, struck in gold, at the mints of 'Adan and Dhu Jibla. Approximate dates: A.D. 1111 to 1174.

xii. Coins of Mahdid of Zabid, struck in silver, at the mint of Zabid. Approximate dates: A.D. 1159 to 1174.

xiii. Rassid (2nd period) coins, struck in gold and silver, at non-exclusive mints Zufar, San'a, Sa'da, Huth, Dhirwah, Kahlan, Muda', 'Ayyan, Bukur, al-Jahili, and Dhamar. Approximate dates: A.D. 1185 to 1390.

xiv. Ayyubid coins, struck in gold, silver, and bronze, at the mints of Zabid, 'Adan, Ta'izz, San'a, al-Dumluwa, Bukur, and Mayban. Approximate dates: A.D. 1174 to 1236.

xv. Rasulid coins, struck in gold, silver, and bronze, at non-exclusive mints 'Adan, Zabid, al-Mahjam, Ta'izz, San'a, Tha'bat, and Hajja. Approximate dates: A.D. 1229 to 1439.

xvi. Tahirid coins, struck in silver, at the mint of 'Adan. Approximate dates: A.D. 1517 to 1538.

xvii. Rassid (3rd period) coins, struck in silver and bronze, at the mints of San'a, Zafir, and Thula. Approximate dates: A.D. 1506 to 1572.

xviii. Ottoman coins, struck in gold, silver and bronze, at the mints of Zabid, San'1a, 'Adan, Kawkaban, Ta'izz, Sa'da, al-Mukha, and Malhaz. Approximate dates: A.D. 1520 to 1773.

C. Ceramic and Clay

1. *Architectural Elements*—Baked clay (terracotta) elements used to decorate buildings. Elements include, but are not limited to, acroteria, antefixes, painted and relief plaques, revetments, carved and molded brick, and wall ornaments and panels. Approximate dates: 1200 B.C. to A.D. 1773.

2. *Non-architectural Relief Sculpture*—Types include, but are not limited to, carved slabs and plaques, funerary and votive stelae, and bases and base revetments. Common decorative motifs include ibex heads and full animals, oxen or bull heads, rosettes, and curvilinear vine and floral patterns, and may be incised or in high relief; inscribed with South Arabian, Arabic, or other script. Includes face plaques and stelae: funerary images of faces; may be combined with ceramic or plaster sculpture; may be inscribed or painted. Approximate dates: 1200 B.C. to A.D. 1773.

3. *Statuary*—Range from large to small figurines; forms include, but are not limited to, human figures, usually clothed; animals such as camels, ibex, oxen, bulls, and lions; or mythological creatures/figures; and trophies such as votive hands. May be glazed or painted; may include South Arabian script. Approximate dates: 1200 B.C. to A.D. 570.

4. *Vessels*—Types include, but are not limited to, utilitarian types and fine tableware, incense burners, and oil lamps.

a. *Post-Neolithic / Bronze Age*—Common wares include, but are not limited to, hand-built gray-brown or reddish-brown coarseware with large black or white inclusions, occasionally burnished; and fineware, which can have slipwash or burnish with incised or punctate decoration. Some pieces may also have imprints of basketry. Common forms include, but are not limited to, platters and shallow bowls with flat bases, deep bowls and basins with rounded bases, rimmed hemispheric bowls with rounded bases, hole-mouthed jars, necked jars, and large storage jars. Approximate dates: 3500 to 900 B.C.

b. *South Arabian Period*—Common wares include, but are not limited to, hand-built reddish-brown, yellow, and gray fabrics, which may be unfinished, burnished, or slip-glazed; the most common is red-burnished slip with carinated vessel shapes. Common forms in-

clude, but are not limited to, small-rimmed jugs with flat base; small beakers and goblets; rimmed bowls, jars, and vases with ring bases; cooking pots with flat bases and straight walls; hemispherical bowls with ledge handles, often with black burnished slip; plates/platters with flat bases; goblets; amphorae; and oil lamps. Decoration includes, but is not limited to, paint, punctation, incised or pressed designs including South Arabian script, and raised dots. Imported Roman terra sigillata ware, Nabatean painted pottery, Iranian fine orange-painted ware, and Indian red-polished ware are also common. Incense burners from this period may be square or cylindrical and decorated with astral symbols or South Arabian script. Includes miniature vessels. Approximate dates: 1200 B.C. to A.D. 570.

c. *Sasanian-Islamic Period*—Includes stoneware, pottery, porcelain, and other wares, which may be unglazed utilitarian wares or glazed types; local types include, but are not limited to, reddish, pink, and white fabrics with glaze styles including turquoise slip-painted, bright yellow glaze, green-painted glaze, salad ware (light green), pseudo-celadon glazed, brown-painted, and blue glazed on white slip; may include Arabic calligraphy. Imported types are also common and include, but are not limited to, Abbasid Period alkaline blue Sasanian-Islamic jars (A.D. 700 to 1100); Abbasid Period opaque white-glazed bowls, either plain or decorated with cobalt (A.D. 800 to 900); and sgraffiato types in various forms with red fabric and incised and painted designs on white slip including floral, geometric, human, and animal motifs (A.D. 1100 to 1400); other types from China, the Arabo-Persian Gulf, the Indian Ocean, and East Africa are also present. Oil lamps from this period typically have rounded bodies with a hole on the top and in the nozzle and may have handles or lugs and figural motifs; include glazed ceramic lamps, which may have a straight or round bulbous body with flared top and several branches. Approximate dates: A.D. 570 to 1773.

D. Glass, Faience, and Semi-Precious Stone

1. *Architectural Elements*—Mosaics; designs include, but are not limited to, landscapes, scenes of deities, humans, or animals, and activities such as hunting and fishing. There may also be vegetative, floral, or geometric motifs; often with religious imagery. Approximate dates: A.D. 500 to 1773.

2. *Vessels*—Forms include, but are not limited to, small jars, bowls, animal-shaped vessels, goblets, spherical forms, candle holders, perfume and unguent jars, and lamps; may have cut, incised, raised, enameled, molded, or painted decoration; various colors. South Arabian Period and early Islamic Period types may be colorless, blue,

green, or orange and may be engraved; may include floral and/or geometric motifs; may include Arabic calligraphy. Approximate dates: 1200 B.C. to A.D. 1773.

3. *Jewelry*—Forms include beads that may be cylindrical, spherical, conical, disc-shaped, and other shapes; may have cut, incised, or raised decoration; various colors; molded and carved glass gemstones; may include other types of glass inlay. Approximate dates: 1200 B.C. to A.D. 1773.

E. Painting

1. *Rock Art*—Incised, pecked, or painted drawings on natural rock surfaces. Decoration includes crosses; humans; animals, particularly camels, ibex, and snakes; geometric and/or floral designs; and other designs; includes fragments. May include pre-Islamic graffiti, commonly in South Arabian script. Approximate dates: 12,000 B.C. to A.D. 100.

2. *Wall Painting*—Decoration includes crosses; humans; animals, particularly camels, ibex, and snakes; geometric and/or floral designs; and other designs; includes fragments. Painted on wood, stone, and plaster. May be on domestic or public walls or tombs. Approximate dates: 1200 B.C. to A.D. 1773.

F. Plaster

1. *Stucco*—Stucco reliefs, plaques, stelae, and inlays or other architectural decoration in stucco. Approximate dates: 1200 B.C. to A.D. 1773.

2. *Face Plaques, Stelae, and Statues*—Funerary images of faces and votive statues; may be combined with stone or ceramic sculpture; may be inscribed or painted. Approximate dates: 1200 B.C. to A.D. 1773.

G. Textiles

Linen cloth used for mummy wrapping. Approximate dates: 500 B.C. to A.D. 500.

H. Leather, Parchment, and Paper

1. *Books and Manuscripts*—Either scrolls, sheets, or bound volumes; including both secular texts and religious texts such as Qurans. Text is often written on vellum or other parchment (cattle, sheep, goat, or camel) and then gathered in leather bindings. Paper may also be used. Types include books and manuscripts, often written in brown ink, and then further embellished with colorful floral or

geometric motifs; covers may also be stamped, gilded, or inset with metal, glass, and semi-precious stones. Approximate dates: A.D. 570 to 1773.

2. *Items for Personal Adornment*—Primarily in leather, including, but not limited to, belts, sandals, shoes, armor, necklaces, bracelets, and other types of jewelry.

I. Wood, Bone, Ivory, Shell, and Other Organics

1. *Architectural and Non-architectural Relief Sculpture*—Includes, but not limited to, carved and inlaid wood panels, rooms, beams, balconies, stages, panels, ceilings, and doors, frequently decorated with religious, floral, or geometric motifs; may have script in Arabic. Types include, but are not limited to, bone, ivory, and shell reliefs, plaques, stelae, and inlays; may be carved or sculpted; commonly include human or animal figures, floral, and/or geometric motifs. Approximate dates: 1200 B.C. to A.D. 1773.

2. *Statuary and Figurines*—Primarily small-size figurines; forms include, but are not limited to, human figures, which may be clothed or not; animals such as camels, ibex, oxen, bulls, and lions; and mythological creatures/figures. May be painted or inscribed/carved in relief in South Arabian, Arabic, or other script. Approximate dates: 1200 B.C. to A.D. 1773.

3. *Furniture*—Primarily in wood; may include thrones, other chairs, tables, and other forms. Approximate dates: 1200 B.C. to A.D. 1773.

4. *Personal Ornaments and Objects of Daily Use*—Types include, but are not limited to, amulets, combs, pins, spoons, small containers, bracelets, buckles, and beads. Wood, bone, ivory, and shell were also used either alone or as inlays in luxury objects including, but not limited to, furniture, chests and boxes, writing and painting equipment, musical instruments, games, cosmetic containers, combs, and jewelry. Approximate dates: 3500 B.C. to A.D. 1773.

5. *Seals and Stamps*—Small devices with at least one side engraved with a design for stamping or sealing; they can be discoid, cuboid, or conoid; may include animals, human figures, and/or inscriptions in various languages. Approximate dates: 1200 B.C. to A.D. 1773.

6. *Inscribed Documents*—Palm-leaf stalks and wooden sticks inscribed in South Arabian script. Approximate dates: 1200 B.C. to 570 A.D.

J. Human Remains

Bones, bone fragments, mummies, and mummified remains.

II. Ethnological Material

Restricted ethnological material from Yemen includes the categories listed below, ranging in date from approximately A.D. 1517 to 1918, and including architectural elements, manuscripts encompassing secular and Islamic religious texts, and Islamic religious and ceremonial objects. The categories of restricted material below exclude ethnological Jewish ceremonial or ritual objects and manuscripts. The following list is representative only.

A. Architectural Elements—This category includes architectural elements and decoration from historic structures in all materials. Primarily in stone (especially limestone, marble, and sandstone), metal (especially copper, brass, lead, and alloys), ceramic or baked clay (terracotta), glass, plaster or stucco, and wood; also includes inlays in bone and ivory. Includes ceilings, rooms, walls, and blocks and bricks from walls, floors, and ceilings; arches, beams, columns, capitals, bases, lintels, jambs, friezes, parapets, crenellations, merlons, pilasters, and tent posts; doors, door frames and fixtures, and window frames, fixtures, fittings, and panes; altars, balconies, chandeliers, finials, prayer niches (mihrabs), cenotaphs, sepulchers, screens, stages, pulpits (minbars), panels, plaques, fountains, wall ornaments, revetments, mosaics, tiles, inlays; and other forms. May be plain, molded, carved, inlaid, gilded, plastered, and/or painted; elements may bear Arabic inscriptions. Common decorative motifs include geometric, floral, arabesque (intertwining), and religious motifs, and may be incised or in high relief. Ceramic or terracotta tiles, plaques, bricks, and other elements may be glazed and/or painted.

B. Manuscripts—Consisting of scrolls, sheets, bound volumes, or boards, primarily written in Arabic and including both secular texts and Islamic religious texts such as Qurans. Text is often written on vellum, other parchment (cattle, sheep, goat, or camel), or paper, then gathered in leather bindings. Texts may also be written on wooden boards. Types include, but are not limited to, books, scrolls, manuscripts, and Islamic study tablets or Quran boards. Includes fragments. May be decorated with colorful religious, geometric, floral, or arabesque (intertwining) motifs and/or paintings.

C. Religious and Ceremonial Objects—This category includes objects typically used in Islamic communal religious and ceremonial settings in all materials. Primarily in stone, metal, ceramic, clay, glass, wood, bone, ivory, textiles, leather, and other organic materials.

1. *Non-architectural Monuments*—Primarily in stone (especially alabaster, limestone, and marble) or metal (especially copper, bronze, and brass). May take the form of carved slabs with religious, floral, geometric, or arabesque (intertwining) motifs. Types include, but are

not limited to, plaques, stelae, memorial stones, tombstones, and cenotaphs; may bear Arabic inscriptions.

2. *Vessels and Containers*—Includes vessels and containers used in religious and ceremonial settings in stone (especially alabaster, limestone, and softstone), metal (especially silver, copper, bronze, brass, and other alloys), ceramic, glass, wood, bone, ivory, leather, and other materials. Types include, but are not limited to, mosque lamps; incense burners and braziers; candlesticks, candelabras, and sconces from religious settings; basins, ewers, and other vessels used for ablutions; reliquaries (and their contents); and scroll or manuscript containers, such as boxes, pouches, chests, cases, or caskets used to hold a Quran or other Islamic religious text. May be plain or decorated with floral, geometric, religious, arabesque (intertwining), or other motifs; may bear Arabic inscriptions.

3. *Furniture*—Primarily in wood and stone. Types include pulpits (minbars), prayer niches (mihrabs), screens, Quran holders or stands, lecterns, study tables, cabinets, and other furniture used in religious and ceremonial settings. May be carved, incised, painted, gilded, and/or inlaid with other materials; may be decorated with floral, geometric, religious, arabesque (intertwining), or other motifs; may bear Arabic inscriptions.

4. *Textiles*—Includes textiles used for religious and ceremonial purposes, primarily in linen, silk, and wool. Types include, but are not limited to, banners, hangings, and curtains used in religious and ceremonial settings; shrine covers; and shrouds. Often woven or embroidered in bright colors with floral, geometric, arabesque (intertwining), or religious designs, and/or Arabic inscriptions.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Executive Orders 12866 and 13563

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules,

and promoting flexibility. CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Orders 12866 and 13563 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and, by extension, Executive Order 13563.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of the Secretary's delegate) to approve regulations related to customs revenue functions.

Troy A. Miller, the Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, add an entry in alphabetical order for “Yemen” to the table in paragraph (a) and remove the entry for “Yemen” in the table in paragraph (b).

The addition reads as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
Yemen	Archaeological material of Yemen ranging in date from approximately 200,000 B.C. to A.D. 1773, and ethnological material of Yemen ranging in date from approximately A.D. 1517 through 1918.	CBP Dec. 24–15.

* * * * *

ROBERT F. ALTNEU,
Director,
Regulations & Disclosure Law Division,
Regulations & Rulings,
Office of Trade U.S. Customs and Border Protection.

AVIVA R. ARON-DINE,
Acting Assistant Secretary of the Treasury for Tax Policy.

DEPARTMENT OF THE TREASURY

19 CFR PART 12

CBP DEC. 24-16

RIN 1515-AE91

**EMERGENCY IMPORT RESTRICTIONS IMPOSED ON
CATEGORIES OF ARCHAEOLOGICAL AND
ETHNOLOGICAL MATERIAL OF UKRAINE**

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of emergency import restrictions on categories of archaeological and ethnological material of Ukraine, pursuant to a determination made by the United States Department of State under the terms of the Convention on Cultural Property Implementation Act. The emergency import restrictions will be in effect until March 5, 2029, unless extended. This document contains the Designated List of Archaeological and Ethnological Material of Ukraine that describes the types of objects or categories of archaeological and ethnological material to which the import restrictions apply.

DATES: Effective on September 10, 2024.

FOR FURTHER INFORMATION CONTACT: For legal aspects, W. Richmond Beavers, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325-0084, ot-otrrculturalproperty@cbp.dhs.gov. For operational aspects, Julie L. Stoeber, Chief, 1USG Branch, Trade Policy and Programs, Office of Trade, (202) 945-7064, 1USGBranch@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*) (CPIA), which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)) (Convention), allows for the con-

clusion of an agreement between the United States and another party to the Convention to impose import restrictions on eligible archaeological and ethnological material. In certain limited circumstances, the CPIA authorizes the imposition of restrictions on an emergency basis (19 U.S.C. 2603). The emergency restrictions are effective for no more than five years from the date of the State Party's request and may be extended for three years where it is determined that the emergency condition continues to apply with respect to the covered material (19 U.S.C. 2603(c)(3)). These restrictions may also be continued, in whole or in part, pursuant to an agreement concluded within the meaning of the CPIA (19 U.S.C. 2603(c)(4)).

Determinations

Pursuant to 19 U.S.C. 2602(a), the government of Ukraine, a State Party to the Convention, requested on March 5, 2024, that import restrictions be imposed on certain archaeological and ethnological material, the pillage of which jeopardizes the cultural heritage of Ukraine. The CPIA authorizes the President (or designee) to apply import restrictions on an emergency basis if the President determines that an emergency condition applies with respect to any archaeological or ethnological material of any requesting State Party (19 U.S.C. 2603).

On July 26, 2024, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations necessary under the CPIA for the emergency imposition of import restrictions on categories of archaeological material and ethnological material of the cultural heritage of Ukraine. The Designated List below sets forth the categories of material to which the import restrictions apply. Thus, U.S. Customs and Border Protection (CBP) is amending § 12.104g(b) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(b)) accordingly.

Importation of covered material from Ukraine will be restricted until March 5, 2029, unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Designated List of Archaeological and Ethnological Material of Ukraine

The Designated List includes, but is not limited to, categories of objects described below.

Archaeological material in the Designated List ranges in date from the Paleolithic period (c. 1.4 million years ago) through 1774 C.E. Ethnological material in the Designated List includes: ethnological religious and ritual objects, and objects related to funerary rites and

burials dating from 200 C.E. to 1917 C.E.; ethnological manuscripts, written documents, and early prints dating from 900 C.E. to 1917 C.E.; ethnological architectural elements dating from 200 C.E. to 1917 C.E.; and ethnological paintings, military material, and traditional folk clothing and textiles dating from 1700 C.E. to 1917 C.E. The designated list set forth is representative only. Any dates and dimensions are approximate.

Categories of Archaeological and Ethnological Material

I. Archaeological Material

A. Stone

B. Metal

C. Terracotta, Ceramic, Porcelain, Faience, and Fired Clay

D. Plaster, Stucco, and Unfired Clay

E. Bone, Ivory, Horn, and Shell

F. Wood and Other Organic Materials

G. Glass

H. Human Remains

II. Ethnological Material

A. Religious and Ritual Objects, and Objects Related to Funerary Rites and Burials

B. Architectural Elements

C. Manuscripts, Written Documents, and Early Prints

D. Ethnological Paintings

E. Military Material

F. Traditional Folk Clothing and Textiles

Approximate simplified chronology of well-known periods:

Paleolithic: c. 1.4 million years ago–8000 B.C.E.

Mesolithic: c. 7000–4500 B.C.E.

Neolithic: c. 6000–3000 B.C.E. (c. 6000–4000 B.C.E. on the right bank of the Dnipro River and 5000–3000 B.C.E. in Polissia and the left bank of the Dnipro River)

Copper Age (or Eneolithic): c. 4000–2000 B.C.E.

Bronze Age: c. 2100–800 B.C.E.

Early Iron Age: c. 800–400 B.C.E.

Ancient Greek Period: c. 650 B.C.E.–47 B.C.E.

Roman Period: c. 47 B.C.E.–340 C.E.

Late Antiquity and Early Byzantine Periods: c. 340–880 C.E.

Kyivan Rus Period: c. 880–1240 C.E.

Late Medieval Period: c. 1240–1650 C.E.

Early Modern Period: c. 1650–1917 C.E.

I. Archaeological Material

Archaeological material includes categories of objects ranging in date from c. 1.4 million years ago through 1774 C.E.

A. Stone

1. *Large Sculpture and Statues*—Including anthropomorphic, zoomorphic, and multi-figure compositions. Made primarily of sandstone, limestone, marble, and shell rock. Neolithic menhir-like stones may represent stylized human images, while Bronze Age statues are usually rectangular with the head outlined and other body parts shown in relief. Scythian sculptures schematically depict warriors. Sculptures from the Eneolithic and Ancient Greek periods often take the form of schematic human busts. Ancient Greek and Roman sculptures often depict naturalistic images of various figures, including humans, mythological creatures, and animals. Medieval nomadic stelae depict humans schematically, often with pointed headdresses. Approximate date: 6000 B.C.E.–1774 C.E.

2. *Miniature Sculptures and Statues*—Made primarily of marble, quartz, and alabaster, these include anthropomorphic and zoomorphic forms and images of objects. Copper Age figurines vary in shape, often featuring prominent eyes, noses, or sex markers. Ancient Greek and Roman marble statuettes are naturalistic, depicting various figures. Approximate date: 6000 B.C.E.–1774 C.E.

3. *Architectural Elements*—Originating from religious, residential, and burial sites and used in walls, floors, vaults, and roofs. Constructed from slate, sandstone, limestone, marble, and other stones. Elements include, but are not limited to, capitals and parts of columns, pilasters, friezes, door and window frames, keystones, altars, altar screens, mosaics, and tiles. Stone slabs with relief and inlaid

sculpted compositions, depicting religious figures, animals, and floral motifs, were embedded into railings or other parts of buildings. Approximate date: 650 B.C.E.–1774 C.E.

4. *Mosaics*—Composed of painted pebbles, marble, limestone, and bricks. Floors made of painted pebbles decorated Ancient Greek-period inner courts and rooms. Early Christian churches in Crimea and Kyiv were decorated with mosaics made of marble of various colors, limestone, and bricks. These mosaics were crafted from small cube-shaped stones (tesserae) measuring approximately 4–6 cm x 3–5 cm, set in a limestone mortar or cement. Motifs include, but are not limited to, geometric patterns, palmettes, depictions of people, borders with meanders, waves, braids, pairs of animals, and griffins. They show a variety of colors, including black, white, dark blue, and brown. Approximate date: 700 B.C.E.–1774 C.E.

5. *Miniature Columns and Small Altars*—Used to decorate shrines, burials, and churches, miniature columns range in size from 10 to 100 cm high and could be rounded, fluted, twisted, or composed of semi-columns. Made primarily of white marble, gray limestone, or shell rock. Small altars are movable architectural structures with rectangular or rounded bases, sometimes column-shaped with a shallow round surface, ranging in height from 10 cm to 1 m. These items are found at Ancient Greek, Roman, Byzantine, and Medieval sites. Approximate date: 650 B.C.E.–1774 C.E.

6. *Furniture*—Including, but not limited to, tables, tripods, and stool legs often shaped like lion's paws, as well as throne or stool backs and armrests decorated with reliefs or sculptures. Typically made of marble and other stones and dating from the Ancient Greek and Roman periods. Approximate date: 650 B.C.E.–1774 C.E.

7. *Slabs with Relief Images and Inscriptions*—Made of marble, limestone, and other local stones, these slabs have been produced since the Bronze Age. Locally quarried slabs are often gray, porous, and rough, while slabs carved in Ukraine on imported marble are white and gray. Motifs on Ancient Greek and Roman period slabs include humans, lions, sphinxes, and griffins, with reliefs sometimes combined with paintings. Inscriptions in various scripts, including Latin, Greek, and Cyrillic, are found on slabs of various shapes and sizes. Approximate date: 3000 B.C.E.–1774 C.E.

8. *Sarcophagi, Ossuaries, and Gravestones*—Sarcophagi and ossuaries are usually rectangular constructions made of jointed or carved slabs; their lids are also included, having roof-like shapes in the Roman period. Sizes vary depending on purpose: for cremations or inhumations, they range from half a meter to several meters. Gravestones are typically decorated with floral ornaments, rosettes, and

cornices; usually rectangular with roof, arch, or cone-shaped tops. Late Antique, Medieval, and Early Modern gravestones include those shaped as crosses, tree trunks, or architectural structures. Approximate date: 650 B.C.E.–1774 C.E.

9. *Crosses and Icons*—Stone crosses are made primarily of marble or limestone and range in size from 10 cm to over half a meter. Stone icons are typically carved as rectangular or round plates usually from pink or blue slate or sandstone. Icons range from 5 to 25 cm in size. They are painted with images of single, frontally depicted, full-length or half-length figures of Christ, the Virgin Mary, or saints such as Nicholas, Theodore Stratelates, or others, or religious scenes with two to three figures shown frontally or in three-quarters view, such as the Annunciation, Presentation, Descent into Hell, and others. Icons usually have a frame, while crosses are sometimes set in frames made of other materials. Precious stones may be used in the decoration of small cultic objects. Approximate date: 300–1774 C.E.

10. *Vessels*—Made primarily of limestone, marble, and alabaster. Including, but not limited to, mortars and pestles of various sizes from the Bronze Age, and marble vessels for washing from the Ancient Greek and Roman periods. Alabaster vases and lamps were common in the Ancient Greek period. Church ceremonial vessels from the Medieval and Early Modern periods vary in shape from miniature narrow bottles (alabastra) to large open-shaped water basins (louteria). Approximate date: 3000 B.C.E.–1774 C.E.

11. *Tools*—Types include, but are not limited to, choppers, handaxes, axe heads, microlithic inlays, scrapers, blades, polishing tools, loom-weights, grindstones, wine-press stones, and anchors. Primarily made of flint, obsidian, granite, quartz, quartzite, shale, and steatite. Early Paleolithic tools were pebbles with chopped edges; later shapes continuing through the Copper and Bronze Ages include flaked tools. Loom-weights vary from conical to elongated shapes. Approximate date: 1.4 million years ago–1774 C.E.

12. *Weapons*—Types include, but are not limited to, arrowheads, spearheads, darts, maces, and cannonballs. Stone weapon heads have been used since the Paleolithic period. Stone maces from the Neolithic period are often smoothed. Cannonballs, often made of porous stone, range from 10 to 30 cm in diameter. Approximate date: 1.4 million years ago–1774 C.E.

13. *Games*—Represented primarily by dice and chess pieces. Chess pieces from the Kyivan Rus period have one flat side and a spherical or anthropomorphic shape. Ancient Greek dice are flat pebbles with ancient engravings and marks. Dice are about 2–4 cm in diameter. Approximate date: 650 B.C.E.–1300 C.E.

14. *Adornments*—Types include, but are not limited to, beads, pendants, and inlays made from materials such as turquoise, marble, quartz, emerald, carnelian, jasper, onyx, ruby, amethyst, and lazurite. Sarmatian jewelry contemporary with the Ancient Greek and Roman periods features inlaid precious stones. Byzantine and Kyivan Rus periods are known for amethyst and lazurite beads and inlays. Imported inlays were used in Medieval and later periods. Approximate date: 6000 B.C.E.–1774 C.E.

B. Metal

1. *Coins*—In gold, silver, bronze, copper, and lead. Some coin types minted in or commonly found in archaeological contexts in Ukraine in various periods are listed below.

a. Ancient Greek cities in Ukraine, including Olbia, Panticapaeum, Chersonesus, and Tyras, minted coins of various weights and metals. Cast currency in dolphin, sturgeon, and arrowhead forms was also produced in this period. See Zograph, A. *Ancient Coinage, Part II, Ancient Coins of the Northern Black Sea Littoral*. (Oxford, 1977). Approximate date: 600–47 B.C.E.

b. In the Roman period, Panticapaeum continued to mint coins, and other Roman imperial coins were also used. See MacDonald, D. *An Introduction to the History and Coinage of the Kingdom of the Bosphorus, Classical Numismatic Studies 5*. (Lancaster, 2005). Approximate date: 47 B.C.E.–500 C.E.

c. Coins minted in the Kyivan Rus period include gold and silver zlatnyks with a portrait of the ruler and the trident (tryzub) symbol. Hexagonal cast ingots (hryvnia) were also produced. Bohemian deniers and dirhams of Islamic states were also used in the Medieval period. Pierced coins and exfoliated (flaked) coins, including half-coins and forgeries, were common. Approximate date: 880–1240 C.E.

d. Coins in use during the Late Medieval and Early Modern periods include, but are not limited to, Mongolian dirhams, Lithuanian denars, Polish ducats, Crimean Khanate akces, Austro-Hungarian talers, Ottoman coins, and Russian rubles. Approximate date: 1240–1774 C.E.

2. *Medallions*—Usually featuring relief images, known since the Early Iron Age, with gold, silver, and bronze phaleras used during the Roman period. Approximate date: 1000 B.C.E.–1774 C.E.

3. *Relief Plaques and Reliefs*—Made of gold, silver, bronze, and lead. Used to decorate clothes, wooden, or leather objects, such as horse harnesses, quivers, scabbards, belts, and vessels. Decorations include animals and floral ornaments. Approximate date: 650 B.C.E.–1774 C.E.

4. *Jewelry*—Types include, but are not limited to, diadems, earrings, rings, necklaces, bracelets, crosses, pendants, fibulae, beads, and tubes. Scythian jewelry in the Animal Style was typically made of gold, less often of silver and bronze. Usually, these pieces depict predators attacking herbivorous animals and mythological creatures. Small gold pendants and beads were used to decorate clothes of these and later nomads. Byzantine and Kyivan Rus jewelry featured floral and geometric designs. Medieval period pendants include moon-shaped examples decorated with ornaments and temporal or temple rings of various shapes, including plain wrapped wire or featuring plates, pendants and ornaments. Bronze and silver fibulae of the Early Iron Age show a variety of forms and are much smaller than the massive Early Medieval fibulae shaped as anthropomorphic figurines or five-rayed ornaments. Approximate date: 3000 B.C.E.–1774 C.E.

5. *Vessels*— Primarily made of bronze, silver, and gold. Large riveted bronze cauldrons with thick walls and short stems or feet, up to 1 meter in diameter, known since the Bronze Age. Smaller Scythian vessels include, but are not limited to, cones, rhytons, kylixes, phiales, cups, ceremonial plates, kraters, ladles, and strainers. Sarmatians widely used Roman-type vessels like situlas and pans. Vessels corresponding to Greek, Roman, Celtic and Late Roman bronze vessel types are also known. Metal handles from Scythian, Greek-period, and other vessels are often shaped as anthropomorphic or zoomorphic figures. Approximate date: 2500 B.C.E.–late 1774 C.E.

6. *Sculpture and Small Figurines*—Include bronze sculptures from the Ancient Greek and Roman periods, often fragmentary. Small figurines typically depicted deities, animals, and mythological creatures. Medieval examples show a more schematic style. Approximate date: 2500 B.C.E.–1774 C.E.

7. *Horse Harness Elements*—Including, but not limited to, shuffrons or chanfrons (face covers), often decorated in relief, psalia (bit and cheek-pieces), horseshoes, spurs, and stirrups. Scythian horse bridles were composed of bronze bits with stirrup-shaped ends, iron bits with looped ends, three-looped iron or bronze cheek-pieces, and nose plates. Sarmatian sets often included silver and lead bridle roundels, iron bits, cheek-pieces, frontlets with a hook, and phaleras. Medieval horse harnesses also featured phaleras, psalia, and other details made of precious metals. For example, the Khazar psalia were nail-shaped, and Kyivan Rus sets sometimes included horse head-covers made of several plates. Approximate date: 1000 B.C.E.–1774 C.E.

8. *Armor Elements*—Including, but not limited to, mail, knee and elbow guards, shields (and shield bosses or umbos), helmets, and belt sets. Scale armor consisted of iron, bronze, or bone scales sewn onto

leather. Chain mail made of iron links was known in the Roman period and more frequent in the Kyivan Rus period. Approximate date: 900 B.C.E.–1774 C.E.

9. *Weapons*—Including, but not limited to, swords (including folded ones), daggers, arrowheads, spearheads, darts, maces, scepters, crossbows, cannons and cannonballs, and sabers. Scythians used leaf-shaped spearheads, bronze or sometimes iron arrowheads with a socket and two or three edges, iron swords and daggers, long swords, and war axes. Kyivan Rus warriors used star-shaped maces, axes, spears, swords, and arrows. Approximate date: 2500 B.C.E.–late 1774 C.E.

10. *Vehicle Elements*—Including, but not limited to, anchors, cart elements, and chariot wheels. Ancient Greek- and Roman-period chariot details often featured figurines. Approximate date: 2000 B.C.E.–300 C.E.

11. *Tools*—Including, but not limited to, knives, axes, tongs, needles, thimbles, medical instruments, strigils, miniature spoons, nails, hoes, plows, and sickles. May be made of bronze, copper, iron, silver, and gold. Precious metals were sometimes applied to miniature or ceremonial tools, which are often decorated with ornaments or figurative terminals. Approximate date: 2500 B.C.E.–1774 C.E.

12. *Bells*—Typically made in bronze or iron, in various shapes and sizes, including spherical, with holes and balls inside; dome-shaped; cylindrical; and pear-shaped. Bells adorned jewelry and dress, as well as carts, chariots, and horse harnesses. Examples for cultic use were hollow, with slits and small balls inside; they were positioned on elongated sockets and crowned with images of animal- or bird-heads or figures. Approximate date: 700 B.C.E.–1300 C.E.

13. *Lighting Devices*—Including oil lamps and candle holders, sometimes elaborately decorated and typically made of bronze. Oil lamps were rounded or elongated containers with one or more nozzles and a handle. Candle holders are found in hanging, table, and standing varieties. They are often decorated with separately produced ornaments. Approximate date: 650 B.C.E.–late 1774 C.E.

14. *Seals or Sealings*—Medieval hanging lead seals used to certify documents are called molybdo-bulas or bullas. They have at least one round flat side with a relief, and they often resemble medallions and were pierced to be hung. Later bullas take the shape of gold chrysobulls. They begin at about 2 cm in diameter, and their color varies from gray to brown. Approximate date: 200–1774 C.E.

15. *Icons and Crosses*—Including, but not limited to, relief metal icons, crosses, and encolpions (icon medallions). Encolpions, relief metal icons, and their frames were often made of mixed materials and

carved, inlaid with precious stones and metals, or engraved. Both icons and crosses are found in various sizes, including smaller examples for wearing on the chest and large ceremonial ones. Approximate date: 300–1774 C.E.

16. *Mirrors*—Including, but not limited to, hand mirrors made of silver and bronze, with one polished flat side and carved decoration on the back. May be round with a handle or a loop at the center of the back. Handles typically take the form of either a loop or a plaque raised above two small posts; they are sometimes decorated with sculpted or carved animals on the terminals, or made in anthropomorphic form. Approximate date: 600 B.C.E.–200 C.E.

17. *Keys and Locks*—Including, but not limited to, cylindrical locks with C-shaped shackles. Later examples were flattened with more complex keyways. Some examples had protective shields. Approximate date: 800–1774 C.E.

18. *Lead Plates*—Including inscribed and uninscribed examples. May be folded or unrolled. Lead plates with traces of cast ornamentation are known. Vary in color from light gray to almost black with green or brown tints. Approximate date: 700 B.C.E.–1300 C.E.

19. *Games*—Including dice and simple chess pieces, made from lead and bronze, shaped as knucklebones or cylinders with or without carving. Used across various periods, in sizes around 2–4 cm in diameter. Approximate date: 650 B.C.E.–1300 C.E.

C. Terracotta, Ceramic, Porcelain, Faience, and Fired Clay

1. *Architectural Ceramics*—Including, but not limited to, terracotta roof tiles with stamps, antefixes (ornamented or anthropomorphic), sculpted rainwater spouts (typically in a lion-head shape), drainpipes, stamped or engraved bricks, including “plinths” (wide and flat fired bricks resembling tiles). Roof-tile styles include ridge tiles, raised tiles (imbrices), and tegulae. May be decorated with stamped relief designs. Antefixes may be decorated with palmettes, anthropomorphic images, or painted. Includes relief plaques and medallions that may be part of antefixes and are decorated with mythological scenes. Bricks may have traces of graffiti or be stamped. Kyivan Rus bricks used in churches may bear trident-shaped relief marks. Approximate date: 650 B.C.E.–1774 C.E.

2. *Stove Tiles*—Including glazed and unglazed stove tiles. Glazed types may be smooth or have relief decoration. Glazed stove tiles are typically decorated in green, blue, white, brown, red, and other colors. Unglazed stove tiles are typically created from clays in brown, buff, pink, red, and yellow colors, and may have negative relief decoration. Stove tiles may be decorated with painted ornaments, such as heral-

dic, floral, anthropomorphic, and/ or zoomorphic motifs, or state and family symbols. Sizes vary, but they are typically 10 to 50 cm in height. Approximate date: 1200–1774 C.E.

3. *Vessels*—Including utilitarian vessels, fine tableware, and special-purpose vessels, in conventional shapes such as amphorae, bowls, bottles, goblets, jars, pitchers, plates, storage vessels, and vases, as well as unconventional shapes such as anthropomorphic and zoomorphic forms. Includes vessel lids and fragments of vessels. Clay colors vary but are typically gray or red. Vessels may be glazed (typically black or red), enameled, or engobed. Vessels may be painted, incised, molded or stamped in relief, or incrustated, or bear applied decoration. Types and characteristics of various periods are described below.

a. *Neolithic and Copper Age*—Vessel styles include Linear Band Ware or Linear Spiral-Meander Pottery with a globular shape and linear incised ornamentation such as spirals, and Cucuteni-Trypillia wares that may be decorated with incised or stamped designs, sometimes filled with white or red paste, or painted in monochrome, bichrome, or polychrome designs in white, red, brown, and black and engobed in red, orange, white, and other colors. Painted designs include geometric and organic motifs. Characteristic Trypillia forms include biconical pots and binocular-shaped cultic vessels, as well as anthropomorphic and zoomorphic vessels. Includes vessels that may have applied zoomorphic ornaments. Approximate date: 6000–2000 B.C.E.

b. *Bronze Age*—Vessel styles include types related to Corded Ware pottery with impressed or incised rope-like decorations and globular forms. Approximate date: 2100–800 B.C.E.

c. *Greek and Roman Pottery*—Ancient Greek pottery most often found in Ukraine includes, but is not limited to, kraters, table amphorae, bomoi, olpes, jars, oinochoes, kylixes, skyphoi, cups, pateras, phiales, lekythoi, plates, lekanes with lids, flasks, and gutti. The most recognizable types of painted vessels are Geometric, Black-figure, Red-figure, and White-ground. Greek and Roman tableware also includes vessels cast in molds such as Hellenistic cups and Roman Sigillata. Black glazed (lacquered) pottery includes several types with stamped ornaments. May bear short painted inscriptions (dipinti) or incised inscriptions (graffiti). The rims of pithoi were often incised with letters or ornaments. Approximate date: 700 B.C.E.–340 C.E.

d. *Byzantine and Medieval*—Vessels may be glazed and/or decorated with paint or relief ornaments. Transport amphorae are also found in this period. Approximate date: 340–1650 C.E.

e. *Miniature Vessels*—Miniature vessels are typically found in the above-mentioned shapes and styles, but in sizes as small as 1 cm in diameter. May be painted. Includes miniature clay spoons. Approximate date: 4000–47 B.C.E

4. *Figurines and Models*—Including figurines representing anthropomorphic, zoomorphic, and mythical figures and models of objects, buildings, or vehicles. Styles common in various periods are described below. Approximate date: 4000 B.C.E.–1774 C.E.

a. *Copper Age Trypillian*—Figurines are typically abstract and stylized with pierced, incised, and pinched details. Models of houses, boats, and sleighs drawn by oxen are typical in this period.

b. *Ancient Greek and Roman Period*—Figurines are usually naturalistic images of humans, half-human creatures, animals, and objects. Some figurines are made with separate movable limbs. Most figurines are hollow inside, with a technical opening (rounded, square, or triangular). May be painted, gilded, and/ or decorated with applied elements, such as small clay balls, fruits, flowers, rosettes, leaves, and/or wreaths, which may bear incised details. Some figurines may have been created in molds. Clay cart models drawn by a horse are also found in the Roman period.

c. *Late Antique to Early Modern Period*—Figurines may be handmade or molded in anthropomorphic and zoomorphic forms. May be painted or incised.

5. *Miniature Altars*—Typically in cubic, rectangular, and rounded forms, but may also take the form of the club of Heracles. They are usually profiled, but sometimes bear relief images on their sides. Sizes typically vary from 10 to over 50 cm in height. Approximate date: 650 B.C.E.–300 C.E.

6. *Molds*—Types include jewelry molds and figurine molds. Sizes vary, but jewelry molds are typically 5–15 cm in length, while figurine molds reach up to 25–30 cm. Approximate date: 1000 B.C.E.–1300 C.E.

7. *Tools*—Including, but not limited to, loom-weights (may be round or pyramidal), coils, and fishing sinkers (may be pyramidal or quadrangular). Loom-weights and sinkers are typically pierced and smoothed but undecorated. Sizes vary, but are typically between 5–10 cm in diameter (rounded shapes) or up to 15 cm in height (pyramidal and quadrangular shapes). Approximate date: 6000 B.C.E.–1300 C.E.

8. *Musical Instruments*—Including wind and rattle-like instruments or toys that may be shaped like birds, eggs, boars, tortoises, other zoomorphic forms, and coffins. Approximate date: 3500 B.C.E.–1774 C.E.

9. *Lamps and Lighting*—Including, but not limited to, oil lamps and candle holders. Oil lamps vary in shape and type, ranging from open-shaped and hanging types to closed types with narrow nozzles, thin handles, and reliefs on the discus. Typically made from gray or red clay. May also be black-glazed or painted. Approximate date: 600 B.C.E.–1774 C.E.

10. *Smoking Pipes*—Early forms are typically short and rounded. Later forms are typically decorated and sometimes stamped. Approximate date: 600 B.C.E.–1774 C.E.

11. *Items of Personal Adornment*—Includes, but not limited to, beads and pendants. May be plain, glazed, painted, and/or engraved. Some beads and pendants have a zoomorphic form. Beads and pendants of Egyptian faience (sintered quartz) are typically light blue and may retain traces of glaze. Forms in this material include, but are not limited to, scarabs, Bes, Horus-Harpocrates, and other Hellenized Egyptian deities, as well as lions. Approximate date: 3500 B.C.E.–1774 C.E.

12. *Games and Toys*—Includes, but is not limited to, gaming pieces such as dice, chess pieces, painted eggs, and disc- or square-shaped tokens. Tokens may bear the impression of a coin on one side. Clay eggs may be plain or painted. Approximate date: 2500 B.C.E.–1774 C.E.

D. Plaster, Stucco, and Unfired Clay Architectural Elements

Including fragments of plaster used in architectural contexts from the Ancient Greek period and from the Kyivan Rus through Early Modern periods. May be painted, incised, or stamped. Approximate date: 650 B.C.E.–1774 C.E.

E. Bone, Ivory, Horn, and Shell

1. *Plaques and Decorated Bones*—Made from the bones of bulls, goats, mammoths, and other animals or from fossilized bone. The bone may be untreated, polished, painted, cut, incised, and/or engraved. Bone plaques may be decorated with linear and geometric incisions (such as coils), images, symbols (such as tamgas) and/or inscriptions. Approximate date: 1.4 million years ago–1774 C.E.

2. *Figurines*—Decoration includes crosses; humans; animals, particularly camels, ibex, and snakes; geometric and/or floral designs; and other designs; includes fragments. Painted on wood, stone, and plaster. May be on domestic or public walls or tombs. Approximate dates: 1200 B.C. to 1773 C.E.

3. *Miniature Vessels and Boxes*—Including, but not limited to, pyxides and their lids and narrow boxes for needles. Often bear engraved decorations. Approximate date: 1000 B.C.E.–1650 C.E.

4. *Tools*—Including, but not limited to, harpoons, needles, coils, awls, knife-and sickle-handles, miniature spoons, and writing implements (styli). Sizes vary, but typically range from 2 to 10 cm in length. Handles may be sculpted. Approximate date: 1 million years ago–1774 C.E.

5. *Musical Instruments*—Including parts of wind instruments such as the aulos, syrinx, syringa, and pan flute, and parts of stringed instruments such as the chelys or lyre, made from tortoiseshell. Approximate date: 650 B.C.E.–1300 C.E.

6. *Horse and Warrior's Equipment*—Including, but not limited to, bone psalia (bit and cheek-pieces), whip handles, plaques for maces, bows, and quivers, and arrowheads. Approximate date: 2500 B.C.E.–1300 C.E.

7. *Items of Personal Adornment*—Including, but not limited to, pins, bracelets, beads, rings, buckles, buttons, combs, furniture inlays, incrustations, box inlays, crosses, mirror handles, pommels, and powder containers. Combs may have engraved decoration, typically in circular form, and may be double-sided. Pommels are often carved as figurines. Amulets are often made of animal teeth and rings of tubular bones. Engraved pieces are commonly decorated with ornaments, marks, signs, and more. Plaques applied to decorate furniture, coffins, chests, and small boxes may bear elaborate reliefs. Buckles, buttons, and other accessories frequently feature engraved designs, images, and sometimes graffiti or carvings. Mirror handles and pins of the Ancient Greek and Roman periods may bear figurative carvings. Crosses and their inlay details were often made of bone, either engraved or carved. Trifold bone containers, approximately 10 cm in height, are interpreted as powder containers. They date to the Late Medieval to Early Modern periods and are often decorated with engravings. Approximate date: 1 million years ago–1774 C.E.

8. *Games*—Including gaming pieces such as dice, knucklebones, simple chess pieces, and other types. Knucklebones often have a variety of engraved marks on them. Chess pieces often have one flat side and a spherical or anthropomorphic shape; some may have a polychrome decoration. Approximate date: 650 B.C.E.–1774 C.E.

F. Wood and Other Organic Materials

1. *Architectural Elements*—Including, but not limited to, elements of towers, wells, churches, dwellings, and fences, particularly from the Medieval period. Carved wooden house decorations are found in

the Medieval and Early Modern periods. Large elements may reach over 2 m, while carved elements may be smaller. Approximate date: 6000 B.C.E.–1774 C.E.

2. *Vehicle Elements*—Including, but not limited to, part of cartwheels, chariots, and boats. Cartwheels and fragments thereof, in both solid and spoked forms, may be found in Bronze Age burials. Includes elements of Ancient Greek and Roman period chariots. Boats and parts thereof from the Medieval period were sometimes used as coffins. Approximate date: 2500 B.C.E.–1774 C.E.

3. *Furniture and Coffin Elements*—Including, but not limited to, parts of tables, tripods, thrones, chairs, and klines (beds), sometimes carved with sculptural details. Carved and inlaid furniture is particularly common in the Medieval and Early Modern periods. Approximate date: 650 B.C.E.–1774 C.E.

4. *Vessels*—Including, but not limited to, Scythian-period cups and trays, which are sometimes set with precious metal plaques, and Medieval-period plates, which may be engraved. Also includes barrels from the Medieval and Early Modern periods. Approximate date: 1000 B.C.E.–1774 C.E.

5. *Tools and Weapons*—Including, but not limited to, distaffs, knife handles, quivers, and weaving combs. Approximate date: 1000 B.C.E.–1774 C.E.

6. *Crosses and Icons*—Including both large ceremonial and smaller personal crosses or carved wooden inlays for crosses. Crosses from the Medieval period and later are often made of cypress. Ceremonial crosses may reach up to 1 m, while personal crosses range from 1 to 15 cm in height. Icons are typically made of from one to three panels of coniferous or deciduous wood that have been joined together, painted, and finished with transparent varnish. Painted images include single, frontally depicted, full-length or half-length figures of Christ, the Virgin Mary, or saints such as Nicholas, Theodore Stratelates, or others, or religious scenes with two to three figures shown frontally or in three-quarters view, such as the Annunciation, Presentation, Descent into Hell, and others. Icons range in size from 20 cm to 2 or 3 m. Approximate date: 300–1774 C.E.

7. *Musical Instruments*—Including, but not limited to, stringed instruments, wind instruments, and percussion instruments. Beckflutes are typical of the Medieval period. Approximate date: 3000 B.C.E.–1774 C.E.

8. *Objects of Ceremonial and Daily Use*—Including, but not limited to, wooden and bark shoes, lids from Ancient Greek-type mirrors, chests, caskets, games—such as simple chess pieces—and game boards. Also includes inscriptions in various scripts and languages on wooden

plaques, birchbark, and paper. Chests may be painted or engraved and range in size from 5 to 50 cm. Approximate date: 2000 B.C.E.–1774 C.E.

9. *Leather Objects*—Including, but not limited to, tokens, elements of dress such as shoes and belts, saddle elements, quivers, and casket elements. Approximate date: 1000 B.C.E.–1774 C.E.

10. *Textiles*—Textiles and textile fragments are attested beginning in the Bronze Age and particularly in the Scythian period. May have floral ornaments in gold thread. Approximate date: 2500 B.C.E.–1774 C.E.

11. *Amber Objects*—Including, but not limited to, sculptures or figurines, usually schematic in style, dating particularly to the Copper and Bronze Ages and the Kyivan Rus period. Also includes jewelry and adornments such as beads, pendants, and inlays. Approximate date: 4000 B.C.E.–1240 C.E.

G. Glass

1. *Items of Personal Adornment*—Including, but not limited to, intaglios (also called gems), plain jewelry inlays, beads, rings, and bracelets. Intaglios are of various colors, but most commonly red or white. They have one flat surface with an engraved image, such as mythological figures and symbols. Inlays were most commonly made for rings, seals, and earrings. Beads, rings, and bracelets were made in a variety of colors, including red, blue, and yellow. Approximate date: 1000 B.C.E.–1774 C.E.

2. *Vessels*—Including both thicker, colored glass and transparent glass. Early vessel shapes include, but are not limited to, aryballo (globular flasks). Thin transparent glass vessels, often with colored waves, are found beginning in the Roman period. Approximate date: 700 B.C.E.–1774 C.E.

3. *Games*—Including, but not limited to, dice and simple chess pieces. Chess pieces may be spherical or anthropomorphic in form; they are usually made of white, green, and brown glass and may be polychromatic. Approximate date: 700 B.C.E.–1300 C.E.

4. *Mosaics*—Glass tesserae were used for mosaics decorating floors, walls, and ceilings of Christian temples, as well as icons. Mosaic tesserae are around 1–2 cm and appear in various colors, including gold and blue. May be cobalt glass. Approximate date: 400–1300 C.E.

H. Human Remains

Including human remains and fragments of human remains, such as skeletal remains, soft tissue, and ash from the human body that may be preserved in burials, reliquaries, ossuaries, and other con-

texts. Bronze Age remains may include elongated skulls and mummified remains. Also includes Bronze Age skulls that have been painted and/or modeled, pierced, or given other decorations, as well as bones painted with red ochre or other materials. Approximate date: 1.4 million years ago–1774 C.E.

II. Ethnological Material

Ethnological material includes the following categories: ethnological religious and ritual objects, and objects related to funerary rites and burials dating from c. 200 to 1917 C.E.; ethnological manuscripts, written documents, and early prints dating from c. 900 to 1917 C.E.; ethnological architectural elements dating from c. 200 to 1917 C.E.; and ethnological paintings, military material, and traditional folk clothing and textiles dating from c. 1700 to 1917 C.E.

A. *Religious and Ritual Objects, and Objects Related to Funerary Rites and Burials*—Religious and ritual objects include moveable objects typically used in Ukrainian communal religious and ceremonial settings in all materials, as well as objects related to funerary rites and burials. Primarily in stone, wood, ceramic, metal, hand mixed paints, and textiles. Approximate date: c. 200–1917 C.E.

1. *Sculptures*—Including stone icons, relief plates, facade reliefs on religious structures, large free-standing sculpture found in both exterior and interior religious settings, small decorative sculptures, roadside crosses or figures, baptismal fonts (sometimes lotus-shaped), altars, lamps, and candlesticks. Primary materials include local stone (pink or blue slate or sandstone), white limestone, and imported materials such as jasper, steatite, alabaster, or wood. Stone icons are small stone plates (5–25 cm) depicting Christ, the Virgin Mary, Nicholas, and other religious figures. Reliefs often feature religious and narrative images such as a warrior fighting a lion, two saintly warriors on horseback, nativity scenes (vertep), and others.

2. *Memorial Objects*—Including sarcophagi, epitaph plaques, and tombstones, such as Jewish matzevah, Crimean Tatar mezartash and bashdash (gravestones bearing the name, place, and dates of birth and death), grave crosses and sculptures, made of stone, marble, slate, and other materials. Objects are often adorned with intricate carvings (floral, human, and zoomorphic motifs) and inscriptions.

3. *Ritual Processional and Altar Objects*—Includes wooden and stone icons of various sizes. Icons are a type of religious image carved from rectangular or round stone plates (usually pink or blue slate or sandstone, 5–25 cm) or painted on wood panels, depicting single saints (Christ, the Virgin Mary, Nicholas, Theodore Stratelates, etc.) frontally in either full-length or half-length, or religious scenes with

two to three figures (Annunciation, Presentation, Descent into Hell, etc.) shown frontally or in three-quarter view. Intended for private use and close viewing. Wooden icons are made of one to three coniferous or deciduous wooden panels, joined together, prepared, covered with tempera paint (pigments ground in egg yolk), and finished with a transparent varnish. May be used in processions, altars, iconostases, or be free-standing. Size usually ranges from 20 cm to 2–3 m.

This category also includes ritual and ceremonial vessels, such as donation bowls, jugs and pitchers for holy water, Easter baskets (paskivnyk), vessels used in wedding ceremonies (lembyk, perepiytisia), Jewish seder plates, and Hanukkah menorah. Lembyk drinking vessels often take human or animal forms. Jewish objects are frequently glazed and decorated with flowers, birds, and animal motifs. The category also includes tabernacles (kivot; sometimes resembling miniature architecture), seven-branched candlesticks, reliquaries, icon cases (kiot), processional icons (feretron), altar crosses, backdrop crosses, hand-held crosses used in benedictions, collection boxes (skarbnychka), and processional staffs (pateritsa, bakulus, pastoral). These objects frequently bear relief carvings, gilding, and symbolic ornamentation. Metal liturgical and ceremonial objects include chests or arks, tabernacles, reliquaries, small portable arks (pyxes), royal doors, metal covers for icon-painted surfaces (shata, ryza, oklad), book covers, fans on long handles (rypida), large hanging chandeliers (panikadylo), wall-mounted lighting fixtures that reflect candlelight in synagogues (reflectors), Hanukkah lamps, thuribles (kadylo), ritual boxes for storing Sabbath spices (bsamim), Torah crowns, Torah shields (tas), small boxes for storing Torah scrolls (mezuzah), Torah pointers, chalices (potyr), Eucharistic plates (diskoi), metal arches to cover diskoi (stars), double-edged knives with short triangular blades (spears), clergymen's headwear (miters), cross-reliquaries (encolpion), pectoral crosses, clergymen's round-form insignia (panagia), and pastoral staffs (crosiers). These items were often made of bronze, copper, gold, or silver, adorned with precious stones, pearls, and enamels, and featured intricate decorations depicting religious scenes. Ceramic altar crosses sometimes imitate those of wood or metal, and sometimes adorn church facades. This category also includes fragments of objects of the above-mentioned types.

4. *Church Furniture and Fixtures*—Including iconostases and altars, as well as their decorative frames, columns, cartouches, consoles, cornices, royal doors, and deacon's doors. Component parts when installed in the context of churches may form multi-tiered ensembles and serve as the framing structures for painted icons.

These are typically carved from softwood or hardwood, decorated with chalk gesso, gilding, silver gilding (vermeil), and colored lacquers. Stylized grapevines are the most frequently occurring decorative motif. This category also includes altar tables (prestol), protheses (proskomydiynik), canopies (kivoriy), anoloys (analoy), tetrapods (tetrapod), golgothas, tombs of the Lord, ambos (pulpits), thrones (synthronon), monastic benches (stasidias), pews, large chandeliers, and candelabrum of varying sizes. Most frequently carved from wood and embellished to a greater or lesser degree with reliefs, painting, and gilding.

5. *Religious Fabrics*—Including Christian processional banners (horuhva), various liturgical service cloths, katasarka indittion, ilyton, antimimension fabrics made with woodcut or copperplate printing techniques with relics sewn inside, antymins depicting the Burial of Christ, pokrivets, chalice and diskos coverings (vozdukh, plaat, pelena), decorative curtains such as those for the royal doors of iconostases (Katapetasma), or those for covering a Torah ark (parokhet), decorative elements for synagogue curtains (lambrequin kaporets). Materials include velvet or homespun cloth, sometimes bearing embroidered or appliqué icons, ornamental motifs, and religious scenes or symbolism, and knotted wool. Religious garments include vestments for priests, deacons, and bishops made of white, gold-embroidered fabrics, miters, kippahs, yarmulkes, and prayer shawls (tallits) made of wool, cotton, silk, or linen.

B. *Architectural Elements*—Objects in this category were produced by skilled craftspeople in a nonindustrial society, with materials often hand-carved and/or made from joined wood, modeled, formed, or painted. Architectural elements are found in stone, wood, ceramic, plaster or stucco, and other painted media used to decorate civic and religious architecture. Approximate date: 200–1917 C.E.

1. *Stone*—Including capitals, balustrades and parapets, vases, lanterns, brackets or consoles, facade reliefs, mascarons (sculpted faces), and cartouches (scrolls, coats of arms).

2. *Wood*—Including carved beams (svolok), carved doorways, balustrades, horse-head brackets (konyk), carved or painted window frames (lyshtvy), and shutters. May be adorned with symbolic carvings reflecting traditional Ukrainian styles.

3. *Ceramic and Terracotta*—Including exterior decorative elements, pipes, roof coverings, chimneys, and echea (acoustic jars). More rarely, may include ceramic cupolas with crosses, capitals, bell towers, and other exterior decorations. Interior architectural elements include ceramic icon cases, altars, and iconostases, frequently decorated with techniques such as relief appliqué, stamping, engraving,

and colorful glazes or underglaze painting, tiles for wall and floor cladding, and stoves. Thick wall tiles, especially from the Lviv and Chernihiv regions, feature underglaze painting, imitating Dutch tiles. Hutsul folk tiles depict everyday or military scenes, or vegetal and animal motifs rendered in dark outlines and underglaze painting (engobes) in green, yellow, and brown. Ichnia tiles bear white surfaces and bird motifs.

4. *Metal*—Including bells and crosses on domes. Bells are hollow, pear-shaped, with bronze, brass, gold, or silver alloy clappers. These are often decorated with relief friezes, figures of saints, dedicatory inscriptions, and coats of arms. Crosses vary in form and may be adorned with geometric patterns (e.g., wavy, bent rods), plant motifs, or smaller crosses.

5. *Glass*—Including monumental mosaics and stained glass, colored stained glass found in domestic and religious settings, and small colored glass fragments (smalta) used in mosaics that bear ornamental, figural, or landscape scenes.

C. Manuscripts, Written Documents, and Early Prints—Manuscripts, portions of manuscripts, and works on paper include handmade, handwritten, hand-illustrated and/or illuminated sheets, bound volumes and their bindings, manuscript books, and non-industrial print media. Includes fragments. Approximate date: 900–1917 C.E.

Types include charters, bulls, autographs, and other paper artifacts; liturgical manuscripts, illuminated manuscripts, early printed books adorned with fabric, leather, and metal covers, and parchment. Early pre-industrial centers of printing include Lviv, Ostrih, Derman, Pochaiv, and Kyiv. Prints include woodcuts, engravings, etchings, and lithographs. These may feature images of Jesus Christ, the Virgin Mary, saints, and religious feast scenes, sometimes illuminated with watercolors.

D. Ethnological Paintings—Paintings were made by artists who progressed from traditional icon painters, using similar techniques, hand mixing paints, and trained in workshops as apprentices to masters of the craft. Approximate date: 1700–1917 C.E.

1. *Icon Paintings on Glass*—A popular form of folk art especially in the nineteenth and early twentieth centuries, Hutsulshchyna, Bukovyna, and Pokuttya ethnographic regions; notable for their bright colors and rich floral ornamentation.

2. *Paper Cutouts*—This category also includes paper cutouts, another type of folk art. These objects are created by cutting forms from paper or thin cardboard and were used in interior decoration mainly in the nineteenth and early twentieth centuries.

E. Military Material—Military material was made by skilled metalworkers and armorers, traditionally working out of a small shop or house—or as employed by an imperial authority—using the same hand-striking process to produce weapons and armor. Approximate date: 1700–1917 C.E. Including standards (bunchuk), maces (pernach), including but not limited to those with metal spikes (buzdyhan), and those with wooden or metal handles, sometimes decorated with precious stones, horsehair, and gold spherical ornaments; sabers, axes (bartka), knives, battle hammers bearing a sharp iron hook attached to a thin handle, pistols, and rifles. Sabers may be decorated with valuable materials such as ivory and gold, and intricate designs. Hutsul bartkas (shepherd’s axes) consist of long wooden handles adorned with geometric patterns using embossing, engraving, and inlay techniques. The Crimean Tatars’ axe (ay balta) consists of heavily-ornamented, crescent-shaped blades. Pistols and rifles, especially ceremonial ones, feature detailed decorations with engraving, niello, and inlays.

F. Traditional Folk Clothing and Textiles—Traditional folk clothing and textiles were handwoven and sewn by members of guilds, operating in small businesses run out of weavers’ homes. Approximate date: 1700–1917 C.E.

1. *Traditional Textiles*—Including woven or knotted woolen carpets with floral motifs, tapestries, gold-woven products that adorned the walls of magnates’ rooms (makata), pile carpets made on vertical looms (kots), rectangular fabrics made of coarse wool, initially woven on a horizontal loom as smooth double-sided carpets (lizhnyk), fabric for covering beds, woven on a horizontal loom with plain or twill weave from hemp or linen threads (vereta), and other domestic textiles, embroidered (rushnyks) or bearing hand-printed ornamental motifs.

2. *Folk Clothing*—Including items from the Hutsul regions and Carpathian regions such as fur coats made from sable, lynx, and fox fur (shuba), protective vests with sewn-on metal plates (kuyak), sleeveless leather cloaks made from fur and lined with satin (vilchura), fur hats (kuchma), wide belts with up to six buckles with rich metal décor (cheres), small bags (tabivka), and narrow bags for arrows (sahaidak, kolchan). Other garments include embroidered shirts, waist garments, wide-cut pants, narrow trousers, upper garments, jackets, belts, aprons, (all of which may be made of woolen fabric, sometimes dyed red or black), sometimes richly embroidered or brocaded. Embroidered fabrics bear regionally unique decorative and color schemes.

a. Garments of the Cossack type are sewn from long panels (kaf-tans, zhupans). Items may be made of red, gold-woven, gray, or blue cloth, or silk, with velvet, brocade, or fur details. Outer garments include coats made of sheepskin (kobenyak), cloth coats lined with cotton with fur (bekesha), or loose-cut coats with slit elbow sleeves (delia). Wide belts are made of gold-woven fabric, often highly embellished.

b. Crimean Tatar costume includes wide trousers (don, duman), wide-cut shirts, striped silk dress-coats, linen shirts (colmek-keten), vests (bagr-elek), jackets (marka), kamzols, eastern-style coats (an-teri, havtani), sleeveless leather coats, and various types of trousers. These garments are often decorated with braids, cords, lace, and unique handmade buttons.

3. *Leather Footwear*—Including footwear made of thick cow or pig rawhide (postoly) or Moroccan leather in various colors (sapyantsi), low-heeled women’s shoes (cherevyky), and Crimean Tatar soft-soled boots of yellow or black leather (mest).

Inapplicability of Notice and Delayed Effective Date

This regulation involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Executive Orders 12866 and 13563

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Orders 12866 and 13563 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and, by extension, Executive Order 13563.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,

requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury’s authority (or that of the Secretary’s delegate) to approve regulations related to customs revenue functions.

Troy A. Miller, the Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections § 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, the table in paragraph (b) is amended by adding Ukraine to the list in alphabetical order to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

* * * * *

19 CFR PART 177

REVOCATION OF FIVE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ELECTROMECHANICAL ORAL HYGIENE DEVICES

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

ACTION: Notice of revocation of five ruling letters and revocation of treatment relating to the tariff classification of electromechanical oral hygiene devices.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking five ruling letters concerning tariff classification of electromechanical oral hygiene devices under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 58, No. 30, on July 31, 2024. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 25, 2024.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at suzanne.kingsbury@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter,

classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 58, No. 30, on July 31, 2024, proposing to revoke five ruling letters pertaining to the classification of electromechanical oral hygiene devices. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In New York Ruling Letter (NY) N282485, NY H80038, NY N219961, NY N219968 and NY N317507, CBP classified electromechanical oral hygiene devices in heading 8424, HTSUS, which provides for “[M]echanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof.” CBP has reviewed these rulings and determined them to be in error. It is now CBP's position that electromechanical oral hygiene devices are properly classified in heading 8509, HTSUS, specifically in subheading 8509.80.50, HTSUS, which provides for “[E]lectro-mechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 85.08; parts thereof: Other appliances: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N282485, NY H80038, NY N219961, NY N219968 and NY N317507 and is revoking or modifying any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (HQ) H331605, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

GREGORY CONNOR

for

YULIYA A. GULIS,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H331605

September 11, 2024

OT:RR:CTF:EMAIN H331605 SKK

CATEGORY: Classification

TARIFF NO.: 8509.80.50

KATHY TROTTA
CONAIR CORPORATION
150 MILFORD ROAD
EAST WINDSOR, NJ 08520

RE: Revocation of New York Ruling Letters (NY) N282485, NY H80038, NY N219961, NY N219968 and NY N317507; Tariff classification of oral hygiene devices

DEAR MS. TROTTA:

This ruling is in reference to New York Ruling Letter (NY) N282485, issued to you on February 8, 2017, on behalf of Conair Corporation, in which U.S. Customs and Border Protection (CBP) classified two models of oral hygiene devices (personal oral irrigation devices) under heading 8424, specifically subheading 8424.89.90, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “[M]echanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Other appliances: Other.” Upon review, we have determined that NY N282485 is in error.

CBP has also undertaken review of NY H80038 (May 10, 2001), NY N219961 (Jun. 28, 2012), NY N219968 (Jun. 28, 2012), and NY N317507 (Mar. 3, 2021), in which CBP classified substantially similar oral hygiene devices as mechanical appliances for spraying liquids under heading 8424, HTSUS. As with NY N282485, CBP has determined that the tariff classification of the articles at issue in NY H80038, NY N219961, NY N219968, and NY N317507 is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke NY N282485, NY H80038, NY N219961, NY N219968, and NY N317507 was published on July 31, 2024, in Volume 58, Number 30 of the Customs Bulletin. No comments were received in response to the proposed action.

FACTS:

NY N282485 classified two models of oral irrigation devices, identified as the Interplak Compact Dental Water Jet (Item WJ3CSR) and the Interplak All-in-One Sonic Water Jet System (Item SWJ1B). Both devices are designed to remove plaque and food from a user’s teeth by means of a stream of pulsating water. The Compact Dental Water Jet is a battery-operated, portable oral irrigation device that features two color coded jet tips, 3-foot coil hose, and 300ml water reservoir. The All-In-One Sonic Water Jet System is an oral irrigation device that features an 800ml water tank, 7-setting pressure control, water jet tip, and five attachments that include toothbrush heads, gum massager, and tongue cleaner.

In NY H80038, CBP classified a battery-operated “family oral irrigator” (Teledyne Water Pik WP-70W), consisting of a plastic reservoir for fluids, 4

color-coded jet tips, and electric pump, under subheading 8424.89.70, HTSUS (2001). In NY N219961, CBP classified a retail set consisting of a water flosser and a rechargeable electric toothbrush with charger (Water Pik WP-900) under subheading 8424.89.00, HTSUS (2012). In NY N219968, CBP classified a retail set consisting of a water flosser and a non-rechargeable electric toothbrush (Water Pik WP-700) under subheading 8424.89.00, HTSUS (2012). In NY N317507, CBP classified a rechargeable handheld oral water flosser that attaches to a shower head under subheading 8424.89.90, HTSUS (2021).

LAW AND ANALYSIS:

Classification under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods will be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. If goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 will then be applied in order.

The following HTS headings are under consideration:

- 8424 Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof:
- 8509 Electromechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 8508; parts thereof:

Chapter 84, Note 1(f), excludes, in pertinent part, “Electromechanical domestic appliances of heading 8509...”

Note 4 to Chapter 85 provides, in pertinent part:

Heading 8509 covers only the following electromechanical machines of the kind commonly used for domestic purposes:

- (a) Floor polishers, food grinders and mixers, and fruit or vegetable juice extractors, of any weight;
- (b) Other machines provided the weight of such machines does not exceed 20 kg, exclusive of extra interchangeable parts or detachable auxiliary devices....

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The Explanatory Note (EN) to 85.09 states, “[T]his heading covers a number of domestic appliances in which an electric motor is incorporated. The term ‘domestic appliances’ in this heading means appliances normally used in the household.”

The devices described in NYs N282485, NY H80038, NY N317507, N219961 and N219968 are electromechanical appliances with self-contained electric motors commonly used in the home for oral hygiene. They weigh less than the 20 kg threshold provided in Note 4(b) to Chapter 85. Thus, the

subject articles are described by heading 8509, specifically subheading 8509.80.50, HTSUS, which provides for other electromechanical domestic appliances, with self-contained electric motor and are therefore precluded from classification in heading 8424, HTSUS, by Chapter 84 Note 1(f). This classification is consistent with NY 852646 (May 25, 1990) in which CBP classified a personal battery-operated portable oral water flosser in subheading 8509.80.00, HTSUS (1990).

HOLDING:

By application of GRIs 1 and 6, the subject oral hygiene devices at issue in NY N282485, NY H80038, NY N219961, NY N219968, and NY N317507 are classified under heading 8509, specifically subheading 8509.80.50, HTSUS, which provides for “[E]lectro-mechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 85.08; parts thereof: Other appliances: Other.” The applicable rate of duty is 4.2% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N282485, dated February 8, 2017, NY H80038, dated May 10, 2001, NY N219961, dated June 28, 2012, NY N219968 dated June 28, 2012, and NY N317507, dated March 3, 2021, are hereby REVOKED.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

GREGORY CONNOR

for

YULIYA A. GULIS,

Director

Commercial and Trade Facilitation Division

CC:

Ms. Gayle E. Meagher
Charles M. Schayer & Co.
3839 Newport Street
P.O. Box 17769
Denver, CO 80217

Emily Lawson
Dorsey & Whitney LLP
Columbia Center
701 Fifth Avenue
Suite 6100
Seattle, Washington 98104–7043

Gayle E. Meagher
National Sales Manager
Charles M. Schayer & Co.
3839 Newport Street
Denver, Colorado 80207

AGENCY INFORMATION COLLECTION ACTIVITIES:

Extension; Establishment of a Bonded Warehouse (Bonded Warehouse Regulations)

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

ACTION: 60-Day notice and request for comments.

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

DATES: Comments are encouraged and must be submitted (no later than November 12, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0041 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov*.

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Establishment of a Bonded Warehouse (Bonded Warehouse Regulations).

OMB Number: 1651-0041.

Current Actions: This submission will extend the expiration date validity without a change to the information collected or method of collection.

Type of Review: Extension (w/o change)

Affected Public: Businesses.

Abstract: Owners or lessees desiring to establish a bonded warehouse must make written application to the U.S. Customs and Border Protection (CBP) port director of the port where the warehouse is located. The application must include the warehouse location, a description of the premises, and an indication of the class of bonded warehouse permit desired. Owners or lessees desiring to alter or to relocate a bonded warehouse may submit an application to the CBP port director of the port where the facility is located. The authority to establish and maintain a bonded warehouse is set forth in 19 U.S.C. 1555, and provided for by 19 CFR 19.2, 19 CFR 19.3, 19 CFR 19.6, 19 CFR 19.14, and 19 CFR 19.36.

Type of Information Collection: Bonded Warehouse Application.

Estimated Number of Respondents: 198.

Estimated Number of Annual Responses per Respondent: 47.

Estimated Number of Total Annual Responses: 9,306.

Estimated Time per Response: 32 minutes.

Estimated Total Annual Burden Hours: 4,963.

Dated: September 9, 2024.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:**Extension; Declaration of Unaccompanied Articles
(CBP Form 255)**

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

ACTION: 60-Day notice and request for comments.

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

DATES: Comments are encouraged and must be submitted (no later than November 12, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0030 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov*.

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration of Unaccompanied Articles (CBP Form 255).

OMB Number: 1651-0030.

Form Number: 255.

Current Actions: This submission will renew the expiration validity, without a change to the information requested or method of collection.

Type of Review: Extension (w/o change).

Affected Public: Individuals.

Abstract: CBP Form 255, Declaration of Unaccompanied Articles, is completed by travelers arriving in the United States either directly or indirectly from the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands who are declaring merchandise purchases while visiting these locations which are to be sent from these insular possessions at a later date. It is the only means whereby the CBP officer, when the traveler arrives, can apply the exemptions or 5 percent flat rate of duty to all of the traveler's purchases.

Type of Information Collection: CBP Form 255.

Estimated Number of Respondents: 7,500.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 15,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1,250.

Dated: September 9, 2024.

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

U.S. Court of International Trade

Slip Op. 24–100

UNITED STATES, Plaintiff, v. KATANA RACING, INC. d/b/a WHEEL & TIRE DISTRIBUTORS, Defendant.

Before: Lisa W. Wang, Judge
Court No. 19–00125

[Defendant’s motion to dismiss for failure to state a claim is denied. Defendant’s motion for summary judgment in the alternative is denied. Plaintiff’s motion for partial summary judgment is denied.]

Dated: September 9, 2024

Emma Eaton Bond, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, argued for the plaintiff.

John M. Peterson, Neville Peterson, LLP, of New York, NY, argued for defendant Katana Racing, Inc. With him on the brief were *Patrick Brady Klein* and *Richard F. O’Neill*.

OPINION AND ORDER

Wang, Judge:

The government (“Plaintiff” or “government”) seeks unpaid duties “stem[ming] from violations of 19 U.S.C. § 1592(a), with respect to 386 entries of certain passenger vehicle and light truck tires (‘PVL’T’) from [the People’s Republic of] China into the United States from November 24, 2009 through August 7, 2012” via “false statements” on entry forms filed with Plaintiff’s U.S. Customs and Border Protection (“Customs”). Campl. ¶¶ 1, 13.

The Defendant, Katana Racing, Inc. (“Defendant” or “Katana”) moves to dismiss Plaintiff’s complaint for failure to state a claim pursuant to United States Court of International Trade (“CIT”) Rule 12(b)(6), or in the alternative, to grant summary judgment pursuant to CIT Rule 56. Def.’s Renewed Mot. to Dismiss for Failure to State a Claim, Or in the Alternative, for Summ. J., Nov. 14, 2023, ECF No. 40 (“Def.’s Mot.”). Plaintiff opposes the motion and, in its cross motion, moves for partial summary judgment. Pl.’s Cross Mot. for Partial Summ. J. and Opp. To Def.’s Combined Mot. to Dismiss and Mot. for Summ. J., ECF No. 46 (“Pl.’s Resp.”).

With respect to Defendant’s motion to dismiss, the issues before the court are whether the government’s complaint: (1) fails to properly identify the person liable for a violation of 19 U.S.C. § 1592(a), and the level of culpability attributable to such person; (2) fails to allege

exhaustion of available administrative remedies; (3) alleged claims barred by laches; and (4) alleges claims barred by the statute of limitations due to the government's purported affirmative misconduct in obtaining a statute of limitations waiver. In the alternative, Katana seeks a motion for summary judgment. Additionally, the court must determine whether Katana's motion in for summary judgement in the alternative or the government's partial motion for summary judgment are proper and justiciable at this stage of proceedings.

For reasons discussed herein, Defendant's motion to dismiss is denied; Defendant's motion for summary judgment in the alternative is denied; and Plaintiff's motion for partial summary judgment is denied.

BACKGROUND

I. Case History Prior to This Suit

On July 15, 2019, the United States brought an action before the CIT against Katana Racing, Inc. to recover unpaid customs duties and fees pursuant to the Tariff Act of 1930, as amended, 19 U.S.C. § 1592(d), based on violations of 19 U.S.C. § 1592(a). Compl. ¶ 1. The government alleges that Katana, a California-based distributor of wheels and tires, was the importer of record for 386 entries of PVLTL from China between November 24, 2009, and August 7, 2012. *Id.* ¶ 3. Throughout that time, Customs alleges that Katana undercalculated the amount of safeguard duties, regular customs duties, harbor maintenance fees, and merchandise processing fees it owed Customs by \$5,742,483.80. *Id.* ¶ 13. After Customs conducted an audit and identified the unpaid duties amount, the parties remained in communication and Katana agreed to three waivers of the statute of limitations, the first of which was signed on May 15, 2014. Def.'s Mot. to Dismiss, ECF No. 12-3, Attached Exhibits. ("Def.'s Ex.") at 159-62. The third and final waiver, dated October 25, 2016, indicated that the statute of limitations would be waived "up to and including July 15, 2019." Compl. ¶ 4.

II. Case History at Initial United States Court of International Trade Appearance

The government filed suit for the unpaid duties on July 15, 2019. Compl. ¶ 1. On August 30, 2019, Katana moved to dismiss the action under CIT Rule 12(b)(6) for "failure to state a claim upon which relief can be granted" and under CIT Rule 12(b)(1) for lack of jurisdiction. *United States v. Katana Racing, Inc.* ("Katana I"), 569 F. Supp. 3d 1296, 1298 (CIT 2022). Katana asserted that "it had been the victim

of a pervasive scheme of . . . ‘identity theft’, as PRC vendors had engaged U.S. customs brokers to file entries in Katana’s name, without its knowledge or permission.” *Id.* at 1302.

Katana’s three main arguments were: (1) the government’s complaint should be dismissed under CIT Rule 12(b)(6) for failure to state a claim because Customs never found a violation of 19 U.S.C. § 1592(a), which is a prerequisite to penalties under 19 U.S.C. § 1592(c) and assertion of unpaid duties under 19 U.S.C. § 1592(d); (2) the government’s complaint should be dismissed under CIT Rule 12(b)(6) because Customs was required to exhaust administrative remedies set forth in 19 U.S.C. § 1592(b) prior to determining a violation of 19 U.S.C. § 1592(a); and (3) that the government’s suit was untimely and should be dismissed under CIT Rule 12(b)(1) because Katana had revoked its final waiver of the statute of limitations due to Customs’ failure to undertake administrative proceedings to determine the validity of Katana’s identity theft claim. *Id.* at 1302–1308.

In its response, the government argued that: (1) Customs did not have to establish a violation of 19 U.S.C. § 1592(a) prior to bringing suit to recover duties under [§] 1592(d), and need only allege a violation of § 1592(a) in its complaint; (2) Customs did not have to exhaust administrative remedies because 19 U.S.C. § 1592(d) creates an independent cause of action for unpaid duties without exhaustion of administrative remedies; and (3) the suit was timely because Katana did not properly revoke its third waiver of the statute of limitations, as the government did not promise administrative proceedings in exchange for the waiver and Customs justifiably relied on that waiver. *Id.*

The court granted Katana’s motion to dismiss on March 28, 2022. The court held that the suit was “barred by the passage of time” because the June 26, 2019 revocation of the third waiver of the statute of limitations was effective after Customs failed to meet its “promise” of providing administrative procedures. *Id.* at 1314. The court further held that the government could not bring suit against Katana solely as the importer of record, and instead was required to provide “precise reasons for holding a defendant ‘responsible’ for paying its § 1592(d) duty demand in its complaint.” *Id.*

III. Case History at Appeal

The government appealed to the United States Court of Appeals for the Federal Circuit (“Federal Circuit”) on May 25, 2022, and contended “that the Court of International Trade erroneously dismissed its suit for lack of jurisdiction pursuant to CIT Rule 12(b)(1).” *United*

States v. Katana Racing, Inc. (“Katana II”), 75 F.4th 1346, 1351 (Fed. Cir. 2023). In its appeal, the government contended: (1) that “the statute of limitations set forth at 19 U.S.C. § 1621 is not jurisdictional. Rather, it is an affirmative defense that, at the pleading stage, must be adjudicated based on the well-pleaded facts in the complaint”; (2) that “the government may bring a non-penalty action for duties under [§] 1592(d) without first undertaking the administrative procedures necessary to find that Katana, itself, violated [§] 1592(a)”; and (3) that “the court erred by holding that Katana’s status as importer of record was not sufficient to state a claim under [§] 1592(d).” *Id.*

Katana, in response, argued that the “the statute of limitations waiver was procured by deception, specifically, Customs’ false promise of the administrative proceedings required by § 1592(b), and that therefore it was in fact ‘void,’ as opposed to ‘revoked.”” *Id.* Following oral argument, Katana “agreed with the government that, to the extent the Court of International Trade dismissed the government’s suit for lack of jurisdiction, it erred.” *Id.* “Instead, Katana argued that the Court of International Trade issued an appealable decision on Katana’s USCIT Rule 12(b)(6) because it lacks factual allegations supporting Katana’s culpability under § 1592(a).” *Id.* at 1352.

The Federal Circuit held, “that the Court of International Trade erred in dismissing the government’s suit for lack of jurisdiction under CIT Rule 12(b)(1).” *Id.* at 1353. In its analysis, the Federal Circuit explained that the statute of limitations set forth in 19 U.S.C. § 1621 is not a jurisdictional time limit but is an affirmative defense, and that “a statute of limitations waiver, which is tantamount to a ‘consensual extension of the limitations period,’ serves to preclude the defendant from raising the statute of limitations as an affirmative defense.” *Id.* (citing *United States v. Inn Foods, Inc.*, 383 F.3d 1319, 1322 (Fed. Cir. 2004)). Ultimately, the Federal Circuit held that, “because the Court of International Trade erred in dismissing for lack of jurisdiction, we reverse the court’s decision and remand the case to the court for further proceedings.” *Id.*

The Federal Circuit provided that on remand, Katana can “assert any and all defenses to the government’s claim for unpaid duties,” but that Katana cannot argue that “Customs was required by statute to follow the penalty assessment procedures set forth in 19 U.S.C. § 1592(b) ... [as] such procedure[s] were not statutorily required.” *Id.* at 1353–1354. The Federal Circuit further declined to address the sufficiency of the complaint on appeal, and provided that, “on remand, Katana may renew its motion to dismiss under CIT Rule 12(b)(6) or seek summary judgment.” *Id.* at 1353, n.5. The Federal Circuit also

provided that, on remand, “Katana will be able to assert *as an affirmative defense* its claim that its third statute of limitations waiver was void.” *Id.* at 1353 (emphasis added).

IV. Case on Remand

Upon remand, Katana renews its CIT Rule 12(b)(6) motion to dismiss, asserting that the complaint should be dismissed because the third statute of limitations waiver is void due to the purported affirmative misconduct of the government. Katana argues that “[i]n indeed, the Court of Appeals stated ‘[i]nstead, on remand Katana may renew its motion to dismiss under CIT Rule 12(b)(6) or seek summary judgment.’” Def.’s Mot. at 6 n.3.

Katana asserts that the complaint should be dismissed under CIT Rule 12(b)(6) because the government failed to state a claim by (1) failing to properly identify the person liable for the violation, and (2) failing to identify the proper level of culpability under 19 U.S.C. § 1592(a). Def.’s Mot. at 12. Katana asserts that the complaint should be dismissed under CIT Rule 12(b)(6) because the government failed to exhaust administrative remedies as required by 28 U.S.C. § 2637(d). Def.’s Mot. at 6. Finally, Katana asserts that the complaint should be dismissed under CIT Rule 12(b)(6) because it is barred by laches. Def.’s Mot. at 27. Katana moves for summary judgment in the alternative. Def.’s Mot. at 29.

The government, in its response and later reply, argues that: (1) the government did not engage in affirmative misconduct in procuring a statute of limitations waiver from Katana; (2) its complaint was properly pleaded; (3) it was not required to exhaust administrative remedies; and (4) its suit is not barred by laches. Pl.’s Resp. The government moves for partial summary judgment, arguing that as the importer of record, Katana is liable for unpaid duties, and that there is no dispute of material, admissible facts. Pl.’s Resp. and Pl.’s Reply in Supp. of Cross Mot. for Partial Summ. J., ECF No. 50 (“Pl.’s Reply”).

STANDARD OF REVIEW

Whether the court has subject matter jurisdiction to hear an action is a “threshold” inquiry. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94–95 (1998). In considering a motion to dismiss under CIT Rule 12(b)(6), the court must accept well-pleaded factual allegations to be true and draw all reasonable inferences in favor of the nonmovant. *Wanxiang Am. Corp. v. United States*, 12 F.4th 1369, 1373 (Fed. Cir. 2021). To survive a motion to dismiss for failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim of relief that is plausible on its face.’” *Ashcroft v. Iqbal*

(“*Iqbal*”), 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Additionally, a motion for summary judgment will be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” CIT R. 56(a); *Anderson v. Liberty Lobby, Inc.* (“*Liberty Lobby*”), 477 U.S. 242, 247 (1986).

DISCUSSION

Although nearly fifteen years have passed since the first entry of tires into the United States without payment of required duties for which Katana was the alleged importer of record, the lengthy administrative history and considerable judicial resources which have already been expended in refereeing the controversy between the government and Katana do not change the procedural posture of the motions before the court: the parties’ respective motions are each upon the initial pleadings, the Defendant has not filed an answer to the government’s complaint, and the discovery process has not yet begun. The events which underlie the government’s claims and Katana’s defenses are variously described and contested in both their substance and their import. Despite submitting and responding to a CIT Rule 56.3 statement, the parties have not yet established a body of undisputed facts that the court could rely upon in determining that no *genuine dispute of any material fact* exists. The court has only the parties’ pleadings and their representations made at oral argument upon which to base its determinations as to the propriety and persuasiveness of the arguments set forth in their motions. That procedural posture informs and compels the court’s analysis and decisions below.

I. Katana’s 12(b)(6) Motion to Dismiss Is Denied

A. The government sufficiently alleged the culpability level for an action under 19 U.S.C. § 1592(d).

The first issue is whether the government asserted the proper level of culpability in its complaint.

To survive a 12(b)(6) motion to dismiss for failure to state a claim, a complaint must show the court that the pleader is entitled to relief through well-pleaded facts accepted as true. In *United States v. Blum*, the Federal Circuit held that independent action can be brought for unpaid duties under 19 U.S.C. § 1592(d) without finding the requisite culpability level under 19 U.S.C. § 1592(a). 858 F.2d 1566, 1570 (Fed. Cir. 1988). “[F]or ordinary negligence [the government] need only

show that acts or omissions constituting a violation occurred.” *United States v. KAB Trade Co.*, 21 CIT 297, 303 (1997). States of mind for negligence may be pleaded generally. *Id. Iqbal* provides that factual assertions are the lynchpin of a claim, and that conclusory legal opinions will not suffice. *Iqbal*, 556 U.S. at 1950.

The government brings a 19 U.S.C. § 1592(d) claim against Katana for unpaid duties in the amount of \$5,742,483.80, without seeking additional penalties. Compl. ¶ 1. Although the government did not use the term “negligence,” it alleged in its complaint that Katana, “as the importer of record,” engaged in conduct which fell below “the reasonable standard of care” required under 19 U.S.C. § 1592(a). *Id.* ¶ 14.

There are three levels of culpability under 19 U.S.C. § 1592: (1) negligence; (2) gross negligence; and (3) fraud. 19 C.F.R. pt. 171, app. B(C) (2023). “As a general rule, a violation is negligent if it results from failure to exercise *reasonable care* and competence.” *Id.* (emphasis added). In comparison, gross negligence and fraud have heightened mens rea culpability levels; where grossly negligent violations are done with actual knowledge of or wanton disregard, and fraudulent violations are the result of a known material false statement, omission, or act. *Id.* The court has previously explained that these three culpability levels are distinct from one another, and only one may be pleaded at the complaint stage:

It is clear that the three alternative theories of liability recognized by 19 U.S.C. § 1592 are mutually exclusive. *See* 19 U.S.C. § 1592(a)(1) (1999) (indicating that a violation may occur “by fraud, gross negligence *or* negligence”). Congress’ use of the word “or” indicates that a choice must be made among the three theories; for purposes of determining penalty liability under 19 U.S.C. § 1592, a person who commits a customs violation may not have more than one mens rea at the time of commission.

United States v. Pan Pac. Textile Grp., Inc., 395 F. Supp. 2d, 1244, 1258 (CIT 2005).

The Supreme Court has further instructed that it is the function of a claim, not the form, that guides a lawsuit by explaining the elements of a claim will guide the suit throughout litigation. *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 589 U.S. 327, 332 (2020). In *Comcast Corp.*, the Court held that while the difficulty to satisfy the elements of a claim may increase, the elements themselves do not change:

Normally, too, the essential elements of a claim remain constant through the life of a lawsuit. What a plaintiff must do to satisfy

those elements may increase as a case progresses from complaint to trial, but the legal elements themselves do not change. So, to determine what the plaintiff must plausibly allege at the outset of a lawsuit, we usually ask what the plaintiff must prove in the trial at its end.

589 U.S. at 332.

The government claims that “Katana did not exercise reasonable care to ensure that these entries, for which Katana is the importer of record, reflected accurate values of the merchandise, and thus Katana violated 19 U.S.C. § 1592(a).” Compl. ¶ 14. The government’s factual allegations of the entries, paired with the “scheme” described, do not collectively transmogrify into a constructive allegation of fraud. *See id.* ¶ 13. Instead, these are factual allegations required in a complaint to support the asserted elements for a claim of negligence, the reasonable standard of care. These elements, alleged in the initial complaint, are the elements that will remain constant throughout the suit. *See* Compl. ¶ 14; *Comcast Corp.*, 589 U.S. at 332.

Further, this Court has previously held that a violation of 19 U.S.C. § 1592(a) creates a presumption of negligence,

It is basic that the applicable statute generally supersedes other standards of conduct. *See* 2 American Law Institute, *Restatement of the Law Second* § 284 (1965). Further, violation of the statute [19 U.S.C. § 1592(a)] creates a presumption of negligence. *See W. Prosser, Handbook of the Law of Torts* 200 (1971). It therefore follows that a statute-based claim which adequately pleads elements of the statute satisfies the pleading requirement [...].

United States v. Valley Steel Prod. Co., 12 CIT 1161, 1162 (1988); *United States v. Jac Natori Co.*, 821 F. Supp. 1514 (CIT 1993).

Although it did not use the term “negligence,” the government properly described the culpability level for negligence, which is the exercise of “reasonable care and competence.” 19 C.F.R. pt. 171, app. B(C) (2023). The government’s allegation of violating the elements for negligence under a statute, 19 U.S.C. § 1592(a), paired with sufficient factual allegations of the claimed violation, satisfies a claim for negligence. Katana’s motion to dismiss on the grounds that the government failed to allege the requisite culpability in its initial complaint is denied.

B. The government properly identified the person responsible for the violation.

The next issue is whether the government properly alleged the person or entity liable for unpaid duties in its complaint.

Blum provides that importers of record can be held liable for unpaid duties. 858 F.2d at 1570. The Federal Circuit explained that,

Although such parties may be innocent of a subsection (a) violation, these parties, if determined to be liable for import duties, are not “innocent” with respect to subsection (d). Subsection (d) allows the United States to recover duties that would have been paid but-for conduct that violates subsection (a). It follows that subsection (d) provides the United States with a cause of action to recover duties from those parties traditionally liable for such duties, *e.g.*, the importer of record and its surety.

Id. Additionally, this Court has held that,

[A]s importer of record, [a defendant is] clearly a ‘person’ within the meaning of 19 U.S.C. § 1592(a) and, as such, may be held liable for a violation of that statute. This Court has repeatedly held that an importer of record belongs to the class of “persons” subject to liability under 19 U.S.C. § 1592(a) and against whom a claim may be brought for suspect entries.

Pan Pac. Textile Grp., Inc., 395 F. Supp. 2d. at 1250 (citing *United States v. F.H. Fenderson, Inc.*, 658 F. Supp. 894 (CIT 1987)).

Where it is uncontested that a defendant is the importer of record for shipments at issue, he is a “person” subject to 19 U.S.C. § 1592(a) liability. *Id.*; *see also United States v. Pacheco*, 151 F. Supp. 3d, 1323, 1327 (CIT 2015) (“Having given Individual A a power of attorney, Pacheco, as principal, can be held liable for her agent Individual A’s actions whether or not she authorized the specific unlawful conduct which constituted the violation of section 1592.”).

Further, 19 U.S.C. § 1592(d) requires only that “if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of subsection (a), the Customs Service shall require that such lawful duties, taxes, and fees be restored, whether or not a monetary penalty is assessed.” 19 U.S.C. § 1592(d). There are sufficient factual allegations pleaded to show that the government believes that Katana, as the alleged importer of record, is culpable for violating subsection (a) under a theory of negligence, and therefore, may be found liable for the unpaid duties. *See generally* Compl.

Nonetheless, the Federal Circuit has made clear that *Katana* is “entitled to assert any and all defenses to the government’s claims for unpaid duties,” including its claims that it was the victim of identity theft. *Katana II*, 75 F.4th at 1354. Such defenses, however, entail fact-based inquiries that are not suited for resolution at the threshold stage of this proceeding. For purposes of its claim, the government properly alleged the “person” within the meaning of a 19 U.S.C. § 1592(a) violation. *Katana*’s motion to dismiss on the grounds of the government’s failing to name the “person” in its initial complaint is denied.

C. The government was not required to exhaust administrative remedies prior to filing suit.

The next issue is whether the government was required to exhaust administrative procedures pursuant to 28 U.S.C. § 2637(d) prior to filing suit for a 19 U.S.C. § 1592(d) claim.

In remanding the case, the Federal Circuit held that,

Katana will not be able to argue that Customs was required by statute to follow the penalty assessment procedures set forth in 19 U.S.C. § 1592(b). As the government argues and as *Katana* recognizes, such procedures were not statutorily required. Section 1592(b) provides the applicable procedures for issuing a pre-penalty and penalty notice in the event the government seeks to collect *penalties* for a violation of § 1592(a). In contrast, § 1592(d) explains that “the Customs Service shall require that ... lawful duties, taxes, and fees be restored, *whether or not a monetary penalty is assessed.*” 19 U.S.C. § 1592(d). Thus, when a penalty is not assessed, as here, the statute does not mandate the performance of the procedures under § 1592(b).

Katana II, 75 F.4th at 1354 (emphasis in original).

The Federal Circuit has held that the government’s claim for unpaid duties under 19 U.S.C. § 1592(d) does not require the performance or exhaustion of the administrative procedures under 19 U.S.C. § 1592(b). *Katana* has not alleged what additional administrative procedures might be required beyond those set forth in subsection (b).¹ As such, it would be inappropriate for the court to create further administrative procedure requirements through application

¹ Instead, *Katana* again alleges that “[w]hile [...] Customs is not required to follow the elaborate procedures of § 1592(b) when asserting a claim for withheld duties, it must articulate that there was a culpable violation of § 1592(a).” Def.’s Mot. at 10. As previously discussed, Customs has alleged a culpable violation of 19 U.S.C. § 1592(a).

of the catch-all provision of 28 U.S.C. § 2637(d). Katana’s motion to dismiss for failure to exhaust additional administrative remedies is denied.

D. This claim is not barred by laches.

The next issue in Katana’s renewed motion to dismiss is whether the government’s claim is barred by laches.

The Supreme Court has provided guidance for determining timeliness of suit when Congress has specifically enacted a statute of limitations. In *SCA Hygiene Prod. Aktiebolag v. First Quality Baby Prod., LLC*, the Court held that,

Laches provides a shield against untimely claims, and statutes of limitations serve a similar function. When Congress enacts a statute of limitations, it speaks directly to the issue of timeliness and provides a rule for determining whether a claim is timely enough to permit relief. The enactment of a statute of limitations necessarily reflects a congressional decision that the timeliness of covered claims is better judged on the basis of a generally hard and fast rule rather than the sort of case-specific judicial determination that occurs when a laches defense is asserted. Therefore, applying laches within a limitations period specified by Congress would give judges a “legislation-overriding” role that is beyond the Judiciary’s power. As we stressed in *Petrella*, “courts are not at liberty to jettison Congress’ judgment on the timeliness of suit.”

SCA Hygiene Prod. Aktiebolag v. First Quality Baby Prod., LLC, 580 U.S. 328, 334–35 (2017) (internal citations omitted) (quoting *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 667 (2014)).

At oral argument, Katana was asked to explain why its argument regarding laches is appropriate given the clear directive from the Supreme Court. Oral Arg. 46:4–5, ECF No. 56. Katana failed to explain why this court should depart from the Supreme Court’s holding or how the facts of this proceeding are distinguishable.² As such, the court will not take on a “legislation-overriding” role. Katana’s motion to dismiss under a theory of laches is denied.

² In response to questioning as to whether Katana wanted to continue its laches argument despite clear directive from the Supreme Court in *SCA Hygiene Prod. Aktiebolag*, counsel for Katana replied, “You know, the normal questions of laches apply; dimmed recollection, dimmed access to documents.” Oral Arg. 48:13–16.

E. Katana’s assertion of affirmative misconduct is appropriately raised by motion for summary judgment.

The Federal Circuit held that the court erred in dismissing the case for lack of subject-matter jurisdiction under CIT Rule 12(b)(1), and that on remand Katana has the option to either “renew its motion to dismiss under USCIT Rule 12(b)(6) or seek summary judgment.” *Katana II*, 75 F.4th at 1353 n.5. The Federal Circuit explained that Katana is “able to assert as an affirmative defense its claim that its third statute of limitations waiver was void.” *Katana II*, 75 F.4th at 1353. Specifically, a waiver may be found to be void if it is not “voluntary” or is procured from an act of “affirmative misconduct.” *Id.* (citing *United States v. Ford Motor Co.*, 497 F.3d 1331, 1336 (Fed. Cir. 2007); *Stange v. United States*, 282 U.S. 270, 276 (1931)). Thus, if Katana were able to demonstrate that the execution of its third statute of limitations waiver was procured through the government’s affirmative misconduct, it would be able to raise the statute of limitations as an affirmative defense to the government’s claims.³

Generally, an affirmative defense is not properly raised at the motion to dismiss stage, and instead is asserted at trial or at the summary judgment stage by reference to undisputed material facts. *See Toxgon Corp. v. BNFL, Inc.*, 312 F.3d 1379, 1382 (Fed. Cir. 2002); *Transamerica Premier Life Ins. Co. v. Selman & Co., LLC*, 401 F. Supp. 3d 576, 588 (D. Md. 2019) (“Courts ordinarily do not ‘resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses’ through a Rule 12(b)(6) motion.”). An exception exists, and an affirmative defense may be considered at the motion to dismiss stage when it “clearly appears on the face of the pleading.” *Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280, 1289 (Fed. Cir. 2024) (quoting *Boquist v. Courtney*, 32 F.4th 764, 774 (9th Cir. 2022) (“Ordinarily affirmative defenses may not be raised by motion to dismiss But a complaint may be dismissed when the allegations of the complaint give rise to an affirmative defense that clearly appears on the face of the pleading.”)). A motion to dismiss based upon an affirmative defense must be resolved by summary judgment standards if it relies upon matters outside the pleadings. *CODA Dev. s.r.o v. Goodyear Tire & Rubber Co.*, 916 F.3d 1350, 1360 (Fed. Cir. 2019) (“If a court does consider material outside the pleadings, the motion to dismiss must be treated as a motion for summary judgment under Rule 56 and all parties must be given a reasonable opportunity to

³ While Katana did not explicitly assert the claimed affirmative misconduct as an affirmative defense, the court will treat it as such following the Federal Circuit’s guidance. *See Katana II*, 75 F.4th at 1353.

present all material pertinent to the motion.”); *see also* 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1366 (3d ed. 2018) (“Once the district court decides to accept matters outside of the pleadings, the presence of the word ‘must’ [in Rule 12(d)] indicates that the judge must convert the motion to dismiss into one for summary judgment.”).

In its renewed motion to dismiss pursuant to CIT Rule 12(b)(6), Katana asserts that the government engaged in affirmative misconduct by inducing Katana to agree to a waiver of the statute of limitations in exchange for a promise to make a “presentation.” Def.’s Mot. at 21. Katana provides multiple exhibits in support of this affirmative defense assertion, including written statements between Customs officers and Katana’s lawyers discussing this purported presentation. Def.’s Ex. at 182. In its complaint, however, the government asserted that,

This action is timely pursuant to 19 U.S.C. § 1621. Katana executed a waiver of the statute of limitations for a two-year period commencing on May 15, 2014. On July 15, 2015, Katana signed a second two-year waiver that extended the period of the waiver until July 15, 2017. On October 25, 2016, Katana signed a third waiver for a period “up to and including July 15, 2019.”

Compl. ¶ 4.

The government’s assertion in its initial complaint is valid on its face. As such, within the context of a motion to dismiss, the court cannot consider Katana’s assertion of affirmative misconduct as an affirmative defense given the factual dispute as to whether its third waiver of the statute of limitations is void. This factual dispute relies on matters outside the initial pleading, rather than on the face of the complaint itself. Therefore, it is appropriate to analyze Katana’s arguments respecting its allegations of the government’s affirmative misconduct under the rubric of a motion for summary judgment.

II. Katana’s Motion for Summary Judgment and Government’s Motion for Partial Summary Judgment Are Denied

Summary judgment is proper when “the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” CIT Rule 56(a); *see also Celotex Corp. v. Catrett* (“*Celotex*”), 477 U.S. 317, 324 (1986). The Federal Circuit has explained that the “movant bears the burden of demonstrating absence of all genuine issues of material fact” and the court “must view the evidence in a light most favorable to the nonmovant and draw all reasonable inferences in its favor and must resolve all doubt over

factual issues in favor of the party opposing summary judgment.” *SRI Int’l v. Matsushita Elec. Corp. of America*, (citation omitted) 775 F.2d 1107, 1116 (Fed. Cir. 1985).

If a genuine dispute about a material fact exists, summary judgment must be denied. *Liberty Lobby*, 477 U.S. at 248. A dispute is “genuine” only if a reasonable fact-finder could find for the non-moving party; a fact is “material” only if it is capable of affecting the outcome of the litigation. *Id.* The primary responsibility of the court on a motion for summary judgment is to determine whether there are any factual issues to be tried. *Dan-Dee Imports, Inc. v. United States*, 7 CIT 241, 243 (1984); *Yamaha International Corp. v. United States*, 3 CIT 108, 109 (1982); *Outlet Book Co. v. United States*, 11 CIT 598, 599 (1987).

A. Katana’s claim regarding the government’s purported affirmative misconduct presents an issue of material fact.

Because Katana’s affirmative defense alleging the government’s purported affirmative misconduct relies on arguments outside of the initial pleadings, the court now considers those arguments under summary judgment standards.

Outside of the initial pleadings, Katana asserts that the government engaged in affirmative misconduct by inducing Katana to agree to a waiver of the statute of limitations in exchange for a promise to make a “presentation.” Def.’s Mot. at 21. Katana argues that it relied on this opportunity to make a presentation in order to “exonerate itself” prior to the government’s demand for payment of unpaid duties. *Id.* at 23. In support of this argument, Katana cites to a March 21, 2016, meeting where Katana’s President, General Manager and Controller, and counsel met with Customs Deputy Assistant Director Jorge A. Garcia. Def.’s Mot. 20–21. After this meeting, and reflected in a March 22, 2016, letter, Mr. Garcia granted Katana an extension of time to tender the claimed unpaid duties and allowed Katana the “right to make presentations in response to that demand in accordance with 19 U.S.C. § 1618.” Def.’s Ex. at 182.

Katana executed its third statute of limitations waiver on October 25, 2016. Def.’s Ex. at 186. Katana asserts that the opportunity to make a presentation was later revoked and that the affirmative misconduct is “the refusal of Customs at Detroit to honor the promise of Mr. Garcia from Los Angeles, that we would be given the opportunity to come in and make a presentation about the identity theft.” Oral Arg. 40:19–22.

The government disagrees that there was any affirmative misconduct. The government presented evidence that a Customs official,

Officer Hiyama, attempted to communicate with Katana multiple times between June 24, 2018 and March 28, 2019, without a response. Def.'s Ex. at 190–91. In these communications, Officer Hiyama asked for updates from Katana, as well as offered a “pathway to settlement.” Def.'s Ex. 190. The government additionally asserts that there was no affirmative misconduct because the right to present was available as a written submission, and “Katana recognized that it could be a written submission.” Oral Arg. 42:24.

The parties' disagreement about the events that transpired during the time period between October 25, 2016 and July 15, 2019 constitutes a genuine dispute about a material fact that cannot be resolved at the summary judgment stage, and without discovery. There is no single test for detecting the presence of affirmative misconduct; each case must be decided on its own particular facts and circumstances. *See Dis Vintage, LLC v. United States*, 40 Int'l Trade Rep. (BNA) 1089 at 18 (CIT 2018); *Lavin v. Marsh*, 644 F.2d 1378, 1382–83 n.6 (9th Cir. 1981). The inquiry is necessarily fact-intensive and given the parties' disagreement about the facts surrounding Katana's third waiver, it is improper to rule on this affirmative defense under summary judgment standards. Katana, however, will have the opportunity to assert its affirmative defense at trial, and both parties will have the opportunity to develop a more thorough factual record through discovery.

B. Katana's claims regarding its level of culpability as a purported victim of identity theft present an issue of material fact.

Also at issue before the court is the government's cross motion for partial summary judgment seeking \$5,742,483.80 in unpaid duties. The government argues that it has presented evidence which “would be admissible at trial” demonstrating the elements necessary for a 19 U.S.C. § 1592(d) claim. Pl.'s Reply at 3–7. According to the government, Katana “failed to submit evidence that would be admissible at trial to rebut these points.” *Id.* The government faults Katana for failing to submit an affidavit or declaration made under penalty of perjury, arguing that “Katana primarily relies on statements it made to CBP, but those statements are hearsay that would not be admissible at trial and, thus, do not establish any dispute of material fact.” *Id.* at 1. Katana disagrees, arguing that the Federal Rules of Civil Procedure were “amended a few years ago [so] you no longer have to put admissible evidence in support of a summary judgment motion.” Oral Arg. 33:20–33:21. Katana asserts that the “only requirement” at the summary judgment stage of a proceeding is a statement “which could be provided to the court at trial in an admissible form.” *Id.* at 33:23–33:25.

Katana is correct that when considering a motion for summary judgment, the court may consider evidence presented in a form that would be inadmissible at trial. *Celotex*, 477 U.S. at 324 (“We do not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment.”). The inquiry for summary judgment purposes is “whether the cited evidence may be reduced to admissible form, not whether it is admissible in the form submitted at the summary judgment stage.” *United States v. Univar USA Inc.* (“*Univar USA*”), 355 F. Supp. 3d 1225, 1235–1236 (CIT 2018) (quoting *United States v. Sterling Footwear, Inc.* (“*Sterling Footwear*”), 279 F. Supp. 3d 1113, 1124 (CIT 2017)); see also *United States v. Harvic Int’l, Ltd.*, 427 F. Supp. 3d 1349, 1356 (CIT 2020).

The government relies on the hearsay rule as the basis for its summary judgment argument. Pl.’s Reply at 3–7. Hearsay is an out-of-court statement offered “to prove the truth of the matter asserted in the statement.” Fed. R. Evid. 801(c). Hearsay is inadmissible at trial unless a federal statute, Federal Rule of Evidence, or other rule “prescribed by the Supreme Court” provides otherwise. Fed. R. Evid. 802. Nonetheless, a court “may consider a hearsay statement in passing on a motion for summary judgment if the statement could be reduced to admissible evidence at trial or reduced to admissible form.” *Sterling Footwear*, 279 F. Supp. 3d at 1124–25 (2017). *Cf.* CIT Rule 56(c)(2).

Here, the email statements made by Katana’s employees regarding its claims of identity theft as a defense against culpability may be hearsay to the extent that they are used to prove the truth of the matter asserted.⁴ See Fed. R. Evid. 801(c). However, “[t]he most obvious way that hearsay testimony can be reduced to admissible form is to have the hearsay declarant testify directly to the matter at trial.” *Sterling Footwear*, 279 F. Supp. 3d at 1124–25. Counsel for Katana stated that with respect to these statements, “there’s an author and a recipient of the email; they could be made to testify at trial.” Oral Arg. 34:3–34.5. The government has made no indication that these individuals would not be able to testify at trial.

As such, irrespective of the government’s arguments regarding the form of the statements, the content of Katana’s statements indicates that there is a genuine dispute as to one of the most significant material facts of the case: the person or entity who is liable under 19 U.S.C. § 1592(a) for the claim of unpaid duties under 19 U.S.C. § 1592(d). Summary judgment is not appropriate when such a significant material fact is in dispute, and CIT Rule 56 was not meant or

⁴ The court makes no finding regarding the admissibility of such statements as hearsay.

anticipated to be used in such manner. *See Univar USA*, 355 F. Supp. 3d at 1235–1236.

Both Katana’s motion for summary judgment in the alternative and the government’s motion for partial summary judgment are therefore denied.

CONCLUSION

For the foregoing reasons, Defendant’s motion to dismiss is **DENIED**; Defendant’s motion for summary judgment in the alternative is **DENIED**; and Plaintiff’s motion for partial summary judgment is **DENIED**. It is **ORDERED** that both parties are hereby directed to file with this court within forty-five days of the date of this order an amended Joint Status Report and Proposed Scheduling Order. Without intimating any view on the merits, the court encourages the parties to conduct a good faith attempt to settle this matter prior to trial.

Dated: September 9, 2024
New York, New York

/s/ Lisa W. Wang
LISA W. WANG, JUDGE

Slip Op. 24–101

SEA SHEPHERD NEW ZEALAND and SEA SHEPHERD CONSERVATION SOCIETY, Plaintiffs, v. UNITED STATES; GINA M. RAIMONDO, in her official capacity as Secretary of Commerce; UNITED STATES DEPARTMENT OF COMMERCE; JANET COIT, in her official capacity as Assistant Administrator of the National Marine Fisheries Service; NATIONAL MARINE FISHERIES SERVICE; JANET YELLEN, in her official capacity as Secretary of the Treasury; UNITED STATES DEPARTMENT OF THE TREASURY; ALEJANDRO MAYORKAS, in his official capacity as Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY, Defendants, and NEW ZEALAND GOVERNMENT, Defendant-Intervenor.

Before: Gary S. Katzmann, Judge
Court No. 20–00112

[The Parties’ Stipulation and Proposed Order of Voluntary Dismissal with Prejudice was filed under USCIT Rule 41(a)(1)(A)(ii). The proposed order is issued, and the case is dismissed.]

Dated: September 11, 2024

Lia Comerford, Earthrise Law Center at Lewis & Clark Law, of Portland, OR, for Plaintiffs Sea Shepherd New Zealand and Sea Shepherd Conservation Society.

Stephen C. Tosini, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendants United States, Gina M. Raimondo, in her official capacity as Secretary of United States Department of Commerce; Janet Coit, in her official capacity as Assistant Administrator of her the National Marine Fisheries Service; National Marine Fisheries Service; Janet Yellen, in her official capacity as Secretary of Treasury United States Department of the Treasury; Alejandro Mayorkas, in his official capacity as Secretary of Homeland Security; and United States Department of Homeland Security. With him on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, and *Patricia M. McCarthy*, Director. Of counsel was *Jason S. Forman*, Office of the General Counsel, National Oceanic and Atmospheric Administration, of Silver Spring, MD.

Warren E. Connelly, *Robert G. Gosselink* and *Kenneth N. Hammer* of Trade Pacific PLLC, of Washington, D.C., for Defendant-Intervenor New Zealand Government.

OPINION AND ORDER**Katzmann, Judge:**

The court returns to the case of the critically endangered Māui dolphin—one of the world’s smallest dolphins—that is endemic to the waters of New Zealand. *See Sea Shepherd N.Z. v. United States* (“*Sea Shepherd I*”), 44 CIT __, 469 F. Supp. 3d 1330 (2020), ECF No. 38; *Sea Shepherd N.Z. v. United States* (“*Sea Shepherd II*”), 46 CIT __, 606 F. Supp. 3d 1286 (2022), ECF No. 108; *Sea Shepherd N.Z. v. United States* (“*Sea Shepherd III*”), 47 CIT __, 611 F. Supp. 3d 1406 (2023), ECF No. 131; *Sea Shepherd N.Z. v. United States* (“*Sea Shepherd*

IV”), 47 CIT ___, 639 F. Supp. 3d 1367 (2023), ECF No. 136; *Sea Shepherd N.Z. v. United States* (“*Sea Shepherd V*”), 48 CIT ___, 693 F. Supp. 3d 1364 (2024), ECF No. 153. Sea Shepherd New Zealand and Sea Shepherd Conservation Society (“Plaintiffs”) initiated this lawsuit in 2020 with the fundamental claim that as a result of incidental capture (“bycatch”) in gillnet and trawl fisheries within their range, the Māui dolphin population is declining such that a U.S. ban on importing certain fish and fish products from New Zealand is required by the Marine Mammal Protection Act (“MMPA”). See First Supp. Compl. ¶¶ 1–4, Nov. 24, 2020, ECF No. 46. Defendants the United States and constituent agencies and officials (“United States”) and Defendant-Intervenor New Zealand Government (“New Zealand”) have long opposed Plaintiffs’ central claim, maintaining that New Zealand’s standards satisfy the MMPA.

The stakes of this case are high. With only 43 remaining dolphins by recent estimates,¹ the Māui dolphin is on the brink of extinction. As discussed in greater detail below, developments over years of litigation in this case have reflected the parties’ collective view of the urgency of the situation. In November 2022, the court issued a preliminary injunction banning the importation of certain fish products from New Zealand. The court lifted that injunction after the U.S. National Oceanic and Atmospheric Administration (“NOAA”) found in January 2024 that “effective for the period from February 21, 2024, through December 31, 2025, New Zealand had established that its fisheries’ measures for reducing the bycatch of Māui dolphins satisfy the provisions of the MMPA.” *Sea Shepherd V*, 693 F. Supp. 3d at 1367. The court did so on the motion of New Zealand, with the consent of the United States, and with no opposition by Plaintiffs.

The parties have now filed a joint stipulation of dismissal with prejudice under USCIT Rule 41. See *Stipulation and Proposed Order of Voluntary Dismissal* (“Notice of Dismissal”), August 23, 2024, ECF No. 162. The case is accordingly dismissed by operation of the parties’ Notice of Dismissal. The court retains jurisdiction to enforce fees and costs.

BACKGROUND

Recognizing the seriousness of the interests at stake, the court pauses to recount the history of the litigation and outline the current state of affairs. In doing so, the court presumes familiarity with the background of this litigation as outlined in prior opinions. See *Sea Shepherd I*, 469 F. Supp. 3d 1330; *Sea Shepherd II*, 606 F. Supp. 3d 1286; *Sea Shepherd III*, 611 F. Supp. 3d 1406; *Sea Shepherd IV*, 639

¹ See *infra* note 10 and accompanying text.

F. Supp. 3d 1367; *Sea Shepherd V*, 693 F. Supp. 3d 1364. The court here summarizes the main developments in this case’s history before discussing the stipulated dismissal before the court.

I. Factual Background

The court begins with a summary of the relatively few undisputed facts. The critically endangered Māui dolphin is endemic to the waters around New Zealand’s North Island. *See* First Suppl. Compl. ¶ 51, Nov. 24, 2020, ECF No. 46 (“First Suppl. Compl.”); *see also* N.Z. Gov’t Answer to Compl. ¶ 39, July 15, 2020, ECF No. 14 (“N.Z. Answer”). It is the northernmost-located subspecies of the more populous Hector’s dolphin, from which the Māui dolphin is morphologically indistinguishable and differentiable only by DNA sequence. *See* First Suppl. Compl. ¶ 52. Out of the more than thirty species of dolphin in the world’s oceans, Māui and Hector’s dolphins are the smallest in the world.²

The parties all stress that the Māui dolphin’s situation is precarious. Beyond that, they have largely disagreed in this litigation as to the more granular details of the dolphin’s current abundance, its range, and the extent of the threat posed to it by fishing. *See Sea Shepherd II*, 606 F. Supp. 3d at 1297–98 (describing the differences in views).

It is clear, however, that commercial fishing, particularly set net and trawl fishing,³ poses at least a major threat to the Māui dolphin’s continued survival. In 1999, the New Zealand Minister of Conservation designated the Māui dolphin as a “threatened species,” and the Māui dolphin is defined as a “protected species” under New Zealand law. *See* First Suppl. Compl. ¶ 71. Since 2003, New Zealand has enacted some restrictions on gillnet and trawl fishing in the Māui dolphin’s range. *See* First Suppl. Compl. ¶ 60; N.Z. Answer ¶ 47. In 2007, New Zealand introduced a Threat Management Plan (“TMP”) to manage human-induced threats to Hector’s, and by extension, Māui dolphins. *See* Hector’s and Māui’s Dolphin Threat Mgmt. Plan Draft for Pub. Consult. at 8 (N.Z. Gov’t Aug. 29, 2007), AR4614; First Suppl. Compl. ¶ 73; N.Z. Answer ¶ 60.

² *See Facts About Hector’s & Māui Dolphin*, N.Z. Dep’t of Conservation, www.doc.govt.nz/nature/native-animals/marine-mammals/dolphins/maui-dolphin/facts/ (last visited Sept. 10, 2024).

³ Set nets, also known as gillnets, “are a type of non-selective fishing net that is hung vertically in the water for hours or . . . days . . . to harvest marine fish and other species.” First Suppl. Compl. ¶ 56. “Trawl fishing is another type of indiscriminate fishing method whereby . . . boats drag a large net through the water column, catching almost everything in the net’s path.” *Id.*

Despite those efforts, a group of experts submitted a report to the International Whaling Commission (“IWC”)⁴ Scientific Committee in 2017 that calculated the Māui dolphin’s potential biological removal level (“PBR”).⁵ See First Suppl. Compl. ¶ 57. That study indicated that in order for the Māui dolphin’s stock to reach or maintain its optimum sustainable level, the subspecies can sustain the human-induced loss of only one individual roughly every 20 years. *Id.* According to another 2019 study considered by the IWC, the estimated mean annual bycatch mortality for Māui dolphins in recent years was 1.8 to 2.4 individuals per year. See *id.* ¶ 58. That bycatch mortality rate vastly exceeded the PBR estimated by the 2017 report. Plaintiffs also argued that New Zealand’s TMP since 2007 fell far short of a recommendation by the International Union for the Conservation of Nature (“IUCN”) to ban gill net and trawl net use from the shoreline to the 100-meter depth contour off the North Island within the Māui dolphin’s range, which Plaintiffs maintained included the waters off both the west and east coasts of the island. See *id.* ¶ 58.

New Zealand initiated a process to revise its TMP for Hector’s and Māui dolphins in 2018. See First Suppl. Compl. ¶ 80; N.Z. Answer ¶¶ 44, 67. Throughout this litigation New Zealand has disputed, among other facts, the IWC study’s estimation of the PBR, the ongoing mortality rate, the attribution of deaths exclusively to fishing, and the purported range of the Māui dolphin. See *Sea Shepherd II*, 606 F. Supp. 3d at 1297–98.

II. Legal Background and Procedural History

Creating with certain exceptions a “moratorium on the taking and importation of marine mammals and marine mammal products,” the MMPA aims to protect marine mammals by setting U.S. standards applicable both to domestic commercial fisheries and to foreign fisheries that wish to export their products to the United States.⁶ 16

⁴ “The IWC was established in 1946 as the global body responsible for the management of whaling and conservation of whales. It is an inter-governmental organisation with a current membership of 88 governments,” including the United States and New Zealand. See *Commission Overview*, Int’l Whaling Comm’n, iwc.int/commission (last visited September 10, 2024).

⁵ PBR refers to the “maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.” 16 U.S.C. §§ 1362(20), 1386(a)(6).

⁶ This court has resolved similar litigation involving the MMPA’s applicability to the critically endangered vaquita, the world’s smallest porpoise, of which only 13 individuals are estimated to remain. See *Nat. Res. Def. Council, Inc. v. Ross*, 42 CIT __, 331 F. Supp. 3d 1338 (2018); *Nat. Res. Def. Council, Inc. v. Ross*, 42 CIT __, 331 F. Supp. 3d 1381 (2018); *Nat. Res. Def. Council, Inc. v. Ross*, 42 CIT __, 348 F. Supp. 3d 1306 (2018); *Nat. Res. Def. Council, Inc. v. Ross*, 774 F. App’x 646 (Fed. Cir. 2019); *Nat. Res. Def. Council, Inc. v. Ross* (“NRDC IV”), 44 CIT __, 456 F. Supp. 3d 1292 (2020); see also *Ctr. for Bio. Diversity v. Haaland*, 47 CIT __, 639 F. Supp. 3d 1355, 1363 (2023).

U.S.C. § 1371(a). The MMPA requires the Secretary of the Treasury to ban the “importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.” *See id.* § 1371(a)(2). To determine whether such fish or fish products result in harm in excess of United States standards, the NOAA Imports Regulation requires foreign harvesting nations to secure “comparability findings” for their fisheries importing fish and fish products into the United States. *See* 50 C.F.R. §§ 216.24(h)(1)(i), 216.3. Any subject fish or fish product harvested in a fishery for which a valid comparability finding is not in effect is unlawful to import. *See id.* § 216.24(h)(1)(ii)(A).

On February 6, 2019, Plaintiffs submitted a formal petition to the U.S. Departments of Homeland Security, Treasury, and Commerce requesting that those agencies invoke their rulemaking authority arising out of the MMPA to ban the importation of fish and fish products originating from New Zealand fisheries in the Māui dolphin’s range that employ either gill nets or trawls. *See* Pls.’ Initial Māui Dolphin Pet. at 3, 12 (Feb. 6, 2019), AR0001 (“Initial Petition”). Plaintiffs urged immediate action because, “[c]ontrary to the MMPA, the United States, through the actions and omissions of the Agencies, currently allows the importation of fish and fish products from New Zealand fisheries that kill and injure critically endangered Māui dolphins in excess of United States standards.” *Id.* at 3–4. On July 10, 2019, NOAA rejected Plaintiffs’ Initial Petition, determining that New Zealand’s TMP was comparable to U.S. standards. *See Notification of the Rejection*, 84 Fed. Reg. 32853 (Dep’t Com. July 10, 2019), AR5426.

On May 21, 2020, Plaintiffs filed their initial Complaint, which asserted two claims challenging NOAA’s denial: (1) that NOAA unlawfully withheld or unreasonably delayed agency action in violation of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(1), by failing to ban the import of commercial fish and products from fish caught using gillnet and trawls in the Māui dolphin’s range in excess of U.S. standards; and (2) that NOAA’s denial of Plaintiffs’ petition for emergency rulemaking was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law under the APA, 5 U.S.C. § 706(2)(A). *See* Original Compl. ¶¶ 84–88, 89–94. Separately, on June 24, 2020, New Zealand announced new domestic fishing measures intended to reduce Māui dolphin bycatch, which were the result of its review of TMP programs beginning in 2018. *See* N.Z. TMP Letter at 1.

On July 1, 2020, Plaintiffs moved for a preliminary injunction embargoing the importation of certain fish products from New Zealand into the United States. *See* Pls.’ Mot. for a Prelim. Inj., July 1, 2020, ECF No. 11. As part of their motion, Plaintiffs argued that New Zealand’s new measures still fell short of comparable U.S. standards. *See id.* at 16. On July 15, 2020, New Zealand instead requested that NOAA perform a comparability assessment for two fisheries—the West Coast North Island inshore trawl and inshore set net fisheries—pursuant to NOAA’s Imports Regulation. *See* Letter from N.Z. to U.S. Dep’t of Com., re: Comparability Finding Request (July 15, 2020), ECF No. 17–2. The United States accordingly moved for a voluntary remand for NOAA to reconsider the denial of Plaintiffs’ petition and to consider New Zealand’s request for comparability findings. *See* U.S. Gov’t Partial Consent Mot. to Remand Case, July 17, 2020, ECF No. 17. The court granted the motion and remanded the petition for reconsideration with an opportunity for Plaintiffs to supplement their original petition. *See Sea Shepherd I*, 469 F. Supp. 3d at 1337–38.

On August 27, 2020, Plaintiffs submitted a supplemental petition to NOAA. *See* Pls.’ Aug. 27, 2020 Suppl. Māui Dolphin Pet. at 5 (Aug. 27, 2020), SUPP0005 (“Supplemental Petition”). The Supplemental Petition broadened the requested ban, now including “the import of all fish and fish products originating from fisheries in the entirety of the Māui dolphin’s current and historical range, which includes the entire coastline of the North Island out to the 100m depth contour, that employ either set nets or trawls.” Plaintiffs argued that these measures were necessary to meet U.S. standards and that, if not implemented, an embargo of all such fish and fish products was required by the MMPA. *Id.* at 3, 12–13, 15.

On November 9, 2020, NOAA published its denial of Plaintiffs’ Supplemental Petition and issued comparability findings for New Zealand’s two relevant fisheries. *See Notification of Rejection of Petition and Issuance of Comparability Findings*, 85 Fed. Reg. 71297, 71297 (Dep’t Com. Nov. 9, 2020), SUPP0001 (“*First Comparability Findings*”). It reasoned that New Zealand’s “regulatory program, implemented on October 1, 2020, will in all likelihood reduce Māui dolphin bycatch below PBR”—which NOAA calculated to allow one death every eight years—and was otherwise comparable in effectiveness to U.S. standards. *See First Comparability Findings*, 85 Fed. Reg. at 71298. NOAA also rejected Plaintiffs’ broad definition of the Māui dolphin’s habitat and limited it to the “west coast of the North Island.” *See* Dec. Mem. attach. A at 6. The issued comparability findings would remain in effect through January 1, 2023. *See First Comparability Findings*, 85 Fed. Reg. at 71297.

On November 24, 2020, Plaintiffs filed the Supplemental Complaint, which restated the initial two claims and added a third claim that NOAA's First Comparability Findings were arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law under the APA, 5 U.S.C. § 706(2)(A). *See* Suppl. Compl. ¶¶ 117–121.⁷ Plaintiffs later filed a Renewed Motion for Preliminary Injunction on December 11, 2020, again requesting an embargo. *See* Pls.' Ren. PI Mot. The United States and New Zealand also moved to dismiss Plaintiffs' first claim. *See* U.S. Mot. to Dismiss, Jan. 27, 2021, ECF No. 58; N.Z. Mot. to Dismiss, Jan. 15, 2021, ECF No. 56. Separately, anticipating the expiration of the First Comparability Findings, New Zealand submitted an application to NOAA on November 30, 2021, requesting new comparability findings for all of its fisheries—including the two fisheries at issue in this case—for the period following January 1, 2023. *See* Joint Status Report, Jan. 7, 2022, ECF No. 90.

On November 28, 2022, the court granted Plaintiffs' motion and issued a preliminary injunction banning the importation of fish and fish products deriving from nine fish species caught in New Zealand's West Coast North Island inshore trawl and set net fisheries, unless affirmatively identified as having been caught with a gear type other than gillnets or trawls. *See* *Sea Shepherd II*, 606 F. Supp. 3d at 1331; *see also* Order, Nov. 28, 2022, ECF No. 109. The court concluded that Plaintiffs were likely to succeed on the merits of their second and third claims, that irreparable harm to the Māui dolphin was likely absent an injunction, and that the balance of hardships weighed in Plaintiffs' favor. *Id.* As for the first claim, the court granted the United States's and New Zealand's motions to dismiss for failure to state a claim arising under 5 U.S.C. § 706(1). *See id.* at 1309–10. NOAA's denial of the Initial Petition was not a failure to act under 5 U.S.C. § 706(1), as Plaintiffs argued, but rather an affirmative agency action of denial that was more properly challenged by Plaintiffs' second claim under 5 U.S.C. § 706(2). *See id.*

Shortly thereafter on December 6, 2022, New Zealand moved to modify the preliminary injunction to allow for a grace period to implement a traceability system.⁸ *See* *Sea Shepherd III*, 611 F. Supp. 3d at 1408. The court denied the motion on January 9, 2023, reason-

⁷ The court notes an apparent typographical error in the paragraph numbering in Plaintiffs' First Supplemental Complaint. *Compare* First Suppl. Compl. at 34–36, *with id.* at 37–38 (repeating paragraph numbers). The citations to paragraphs herein reflect numbering retabulated by the court.

⁸ The phrase “traceability system” referred to procedures that would have certified that exports of New Zealand fish and fish products to the United States were not of the kind prohibited by the preliminary injunction. *See* *Sea Shepherd III*, 611 F. Supp. 3d at 1408 n.4.

ing that New Zealand had not established a change of circumstances that would make the continuation of the original injunction inequitable. *Id.* at 1410. Then, in light of the expiration of the First Comparability Findings on January 1, 2023, the United States moved to dismiss as moot Plaintiffs' third claim. *See* U.S. Mot. to Dismiss, Feb. 2, 2023, ECF No. 132. On June 21, 2023, the court denied that motion, concluding that aspects of Plaintiffs' request for declaratory relief under the third claim remained live. *See Sea Shepherd IV*, 639 F. Supp. 3d at 1371.

Following that decision, the parties jointly moved to stay litigation in the case. *See* Joint Mot. for Stay of Litig., July 7, 2023, ECF No. 137. In that motion, the parties stated their view that "NMFS' decision on the pending comparability applications may obviate, in whole or in part, the need for continued litigation in this action." *Id.* at 2. The court then stayed this litigation NOAA issued its decision on New Zealand's pending comparability finding applications for New Zealand's North Island West Coast Fisheries. Order ¶ 1, July 14, 2023, ECF No. 138. At the time, NMFS was expected to issue the pending comparability findings relevant to this case by November 30, 2023. The NMFS later extended the MMPA exemption period by two years to end on December 31, 2025, meaning that NMFS had until November 30, 2025, to issue the pending comparability findings relevant to this case. *See Modification of Deadlines Under the Fish and Fish Product Import Provisions of the Marine Mammal Protection Act*, 88 Fed. Reg. 80193, 80194 (Dep't Com. Nov. 17, 2023); 50 C.F.R. § 216.24(h)(6)(ii).

On January 24, 2024, NOAA published a new set of comparability findings covering the two fisheries at issue in this case. *See Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act—Notification of Issuance of Comparability Findings*, 89 Fed. Reg. 4595 (Dep't Com. Jan. 24, 2024) ("*Second Comparability Findings*"). NOAA stated that it had reconsidered the First Comparability Findings, "based on supplemental information provided by Plaintiffs and New Zealand since that time," and again concluded that New Zealand's revised TMP of October 2020 was comparable in effectiveness to U.S. standards. *Id.* at 4596–97. NOAA noted that since the 2020–2021 fishing year, "fishing effort has been reduced by 71 percent for the trawl fleet and 97 percent for the set net fleet," and "50 percent of trawl effort and 90 percent of set net effort were monitored." *Id.* at 4596. Ultimately, NOAA concluded, New Zealand's TMP "will result in Māui dolphin bycatch below PBR and concentrate the fisheries restrictions in the areas with the greatest risk, specifically those areas where fishing activities overlap with the

Māui dolphin population.” *Id.* at 4597. The Second Comparability Findings are valid until December 31, 2025.

On March 19, 2024, New Zealand moved to dissolve the preliminary injunction. *See* N.Z. Unopposed Mot. to Dissolve the Prelim. Inj., Mar. 19, 2024, ECF No. 152. Plaintiffs did not oppose, and the United States consented to, the dissolution of the preliminary injunction. *See id.* at 2. The court concluded that NOAA’s issuance of the Second Comparability Findings constituted a “significant change in [the] factual conditions and law” underlying the preliminary injunction and dissolved the injunction. *See Shepherd V*, 693 F. Supp. 3d at 1367.

Plaintiffs have since moved for extensions of the stay, with the consent of the United States and New Zealand, in order to negotiate the case’s stipulated dismissal and resolve any claims for attorneys’ fees and costs. *See* Pls.’ Status Report & Consent Mot. to Extend the Stay ¶ 1, July 22, 2024, ECF No. 160. Regarding the status of their second and third claims in the Supplemental Complaint, Plaintiffs have stated:

In light of NOAA’s issuance of the new comparability findings for New Zealand’s West Coast North Island multi-species set-net and trawl fisheries . . . , Plaintiffs’ third claim for relief (challenging NOAA’s October 26, 2020 comparability finding) is likely moot. Plaintiffs are not going to challenge the new comparability findings or further pursue their second claim for relief (challenging NOAA’s denials of Plaintiffs’ Petitions). As such, once Plaintiffs and Defendants resolve Plaintiffs’ request for attorneys’ fees and costs, the Parties intend to submit a proposed stipulated dismissal of the case.

Id. ¶ 5. The court granted the motions extending the stay to allow for the case’s resolution. *See* Order, July 24, 2024, ECF No. 161; Order, June 21, 2024, ECF No. 159; Order, May 20, 2024, ECF No. 155; Order, Mar. 13, 2024, ECF No. 151.

DISCUSSION

On August 23, 2024, the parties filed a joint stipulation of dismissal with prejudice under USCIT Rule 41. *See* Notice of Dismissal. On September 9, 2024, the parties filed a copy of their settlement agreement. *See* Settlement Agreement, Sept. 9, 2024, ECF No. 165. Under the terms of the stipulated dismissal and the settlement agreement, this action will be dismissed with prejudice and the United States will pay to Plaintiffs \$375,000.00 in attorneys’ fees and costs, pursuant to

the Equal Access to Justice Act, 28 U.S.C. § 2412(d). *See id.*; Notice of Dismissal.

Under USCIT Rule 41, a plaintiff “may dismiss an action without a court order by filing . . . a stipulation of dismissal signed by all parties who have appeared.” USCIT R. 41(a)(1)(A)(ii). The court held a conference on September 10, 2024. During that conference, the parties provided an overview of the preceding litigation and confirmed their intention to dismiss this action with prejudice. *See* Status Conference.⁹ The court retains jurisdiction to enforce the United States’s payment obligations under the parties’ agreement on attorneys’ fees and costs associated with this case. To be clear, this opinion does not preclude future legal challenges to the Second Comparability Findings. Nor does the court suggest any view on the Second Comparability Findings.

The case’s dismissal is issued below, and this case is now closed. But the fate of the Māui dolphin is not so easily resolved. Recent estimates indicate that approximately forty-three dolphins remain, and their population has declined at the rate of 3 to 4 percent per year between 2001 and 2021.¹⁰ Today’s disposition, then, is far from bill of health for a species teetering on the brink of extinction. As the court noted in prior litigation involving the similarly critically endangered vaquita, *see supra* note 6, the loss of a species represents a “loss of biodiversity, unique evolutionary history, and the potential for future evolution.” *NRDC IV*, 456 F. Supp. 3d at 1294.

It can be noted that the outcome here reflects the efforts of Plaintiffs, the United States, and New Zealand as they all work within complex domestic and transnational legal frameworks to avert catastrophe. At stake is nothing less than the survival of the Māui dolphin, which cannot be replaced.

CONCLUSION

A voluntary dismissal by joint stipulation under Rule 41(a)(1)(A)(ii) is effective “automatically.” *Versata Software, Inc. v. Callidus Software, Inc.*, 780 F.3d 1134, 1136 (Fed. Cir. 2015). The Order of Voluntary Dismissal is granted as requested, and is issued below.

SO ORDERED.

⁹ The audio recording of the status conference is available to the public on the website of the U.S. Court of International Trade. *See Audio Recordings of Select Public Court Proceedings*, U.S. Ct. of Int’l Trade, <https://www.cit.uscourts.gov/audio-recordings-select-public-court-proceedings> (last visited Sept. 10, 2024).

¹⁰ *See* R. Constantine, IUCN, *The IUCN Red List of Threatened Species: Cephalorhynchus hectori ssp. maui* 1 (2023), <https://www.iucnredlist.org/species/39427/50380174> (last visited Sept. 10, 2024); Mem. from A. Cole to J. Coit, re: Issuance of Comparability Findings for the Government of New Zealand’s Set-Net and Trawl Fisheries—Decision Memorandum at 2 (NOAA Jan. 2, 2024), ECF No. 144–2.

Dated: September 11, 2024
New York, New York

/s/ Gary S. Katzmann

JUDGE

SEA SHEPHERD NEW ZEALAND and SEA SHEPHERD CONSERVATION SOCIETY, Plaintiffs, v. UNITED STATES; GINA M. RAIMONDO, in her official capacity as Secretary of Commerce; UNITED STATES DEPARTMENT OF COMMERCE; JANET COIT, in her official capacity as Assistant Administrator of the National Marine Fisheries Service; NATIONAL MARINE FISHERIES SERVICE; JANET YELLEN, in her official capacity as Secretary of the Treasury; UNITED STATES DEPARTMENT OF THE TREASURY; ALEJANDRO MAYORKAS, in his official capacity as Secretary of Homeland Security; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY, Defendants, and NEW ZEALAND GOVERNMENT, Defendant-Intervenor.

Before: Gary S. Katzmann, Judge
Court No. 20-00112

**ORDER OF VOLUNTARY DISMISSAL UNDER USCIT RULE
41(a)(2)**

This matter came before the court on a Stipulation and Proposed Order of Voluntary Dismissal Under USCIT R. 41(a)(2), filed jointly by Plaintiffs Sea Shepherd New Zealand and Sea Shepherd Conservation Society, (together, Plaintiffs); Defendants, United States, et al.; and Defendant-Intervenor, the Government of New Zealand. The Stipulation and Proposed Order present terms that the Court deems proper. It is hereby **GRANTED AS REQUESTED**, and this matter is dismissed with prejudice. The Court retains jurisdiction to enforce Defendants' obligations under the Parties' agreement on attorneys' fees and costs associated with this case.

SO ORDERED.

Dated: September 11, 2024
New York, New York

/s/ Gary S. Katzmann

JUDGE

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