

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)	
)	
Taotao USA, Inc.,)	Docket No. CAA-HQ-2015-8065
Taotao Group Co., Ltd., and)	
Jinyun County Xiangyuan Industry Co., Ltd.)	
)	
Respondents.)	

BUSINESS CONFIDENTIALITY ASSERTED

The exhibits submitted with Complainant’s Initial Prehearing Exchange contain material claimed to be confidential business information (“CBI”) pursuant to 40 C.F.R. § 2.203(b). The material claimed as CBI are Complainant’s Exhibits CX001 through CX011, CX063, CX066, CX077, CX086, CX089, CX147, and CX152. Exhibits CX001 through CX011 consist of applications for certificates of conformity submitted to the EPA by respondents Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd. (collectively, “Respondents”). Respondents have consented to have this information disclosed to their counsel, but have not otherwise waived their claim of CBI over these documents. Exhibits CX063, CX066, CX077, CX086, CX089, CX147, and CX152 consist of or include analytical reports displaying CBI copied from exhibits CX001 through CX011. These exhibits are therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

In addition, exhibits CX155, CX156, CX157, CX157, and CX159 consist of potential witnesses’ resumes and contain personally identifiable information (“PII”), some of which may

be sensitive PII. To safeguard these potential witnesses' privacy in keeping with the Privacy Act of 1974 (codified at 5 U.S.C. § 552a), these exhibits are also filed under seal.

Exhibit CX091 contains analytical results pertaining to companies who are not party to this action. Because these results are not relevant to this action, they have been redacted.

A complete set of the all exhibits, and a set in which the exhibits containing CBI and PII are omitted, have been filed with the Regional Hearing Clerk. If you have any questions, please contact Edward Kulschinsky at (202) 564-4133, or at kulschinsky.edward@epa.gov.

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COMPLAINANT’S INITIAL PREHEARING EXCHANGE

The Director of the Air Enforcement Division of the U.S. Environmental Protection Agency’s Office of Civil Enforcement (“Complainant”) files this Initial Prehearing Exchange, consistent with section 22.19 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), and with the Prehearing Order issued by this Tribunal on May 11, 2016, as amended by the Order on Motion for Leave to Amend the Compliant and to Extend Prehearing Deadlines issued on July 5, 2016. Complainant may amend or supplement this Prehearing Exchange as provided by sections 22.19(f) and 22.22(a)(1) of the Consolidated Rules.

A. Potential Witnesses

Complainant may call any or all of the following witnesses at the evidentiary hearing in this matter. Complainant may supplement this list, upon adequate notice to the Tribunal and to Respondents, should Respondents’ Prehearing Exchange(s) or other information reveal the need for additional or alternative witnesses.

1. Amelie Isin, United States Environmental Protection Agency (“EPA”) Region 3, formerly of EPA’s Mobile Source Enforcement Branch (“MSEB”), Air Enforcement Division (“AED”), Office of Civil Enforcement (“OCE”), Office of Enforcement and Compliance Assurance (“OECA”). Ms. Isin is an Environmental Engineer who served as the EPA’s lead investigator in this matter. Ms. Isin may testify concerning the vehicle inspections she performed, and inspections she coordinated and oversaw that were performed by other EPA inspectors, EPA contractors, or other federal employees relevant to this matter. Ms. Isin may also testify about the calculation of the proposed civil penalty in this matter. In addition to testifying as a fact witness, Ms. Isin may be qualified to testify as an expert in EPA’s mobile source enforcement program; penalty calculation under the EPA’s Clean Air Act Mobile Source Civil Penalty Policy; and catalytic converter analysis. Ms. Isin’s resume is included among Complainant’s exhibits and is marked as CX155.
2. Cleophas Jackson, Director, Gasoline Engine Compliance Center (“GECC”), Compliance Division (“CD”), Office of Transportation and Air Quality (“OTAQ”), Office of Air and Radiation (“OAR”), EPA. Mr. Jackson directs the operations of the EPA office that receives and reviews applications for EPA Certificates of Conformity (“COCs”) submitted for gasoline-powered vehicles like those at issue in this matter. He may testify as a fact witness about Respondents’ COC applications, annual production reports, and about the confirmatory test orders his office issued to Respondents. Mr. Jackson may also be qualified to testify as an expert about the EPA’s Clean Air Act vehicle and engine regulatory program, and about emissions testing. Mr. Jackson’s resume is included in Complainant’s exhibits and is marked as CX156.
3. Mario Jorquera, MSEB, AED, OCE, OECA, EPA. Mr. Jorquera is a Senior Environmental Engineer with EPA’s Mobile Source Enforcement Branch. Mr. Jorquera coordinates with U.S. Customs and Border Protection to inspect imported goods at ports for Clean Air Act compliance, and has taught U.S. Customs and Border Protection Officers about the EPA’s mobile source regulatory program. Mr. Jorquera has also inspected shipments of Respondents’ vehicles at the Los Angeles/Long Beach Seaport. Mr. Jorquera may testify as a fact witness about the EPA’s inspection program, and about his inspections of Respondents’ vehicles.
4. Andy Loll, Eastern Research Group, Inc. (“ERG”). Mr. Loll is a Senior Chemical Engineer with ERG, a contractor to the U.S. EPA. Mr. Loll leads ERG’s work supporting EPA enforcement of fuel, vehicle, and engine regulations. Mr. Loll may testify as a fact witness about inspections of Respondents’ vehicles conducted by ERG employees, and about ERG’s analyses of catalytic converters taken from Respondents’ vehicles.
5. Colin Wang, ERG. Mr. Wang is an ERG employee who has inspected entries of Respondents’ vehicles at the Los Angeles/Long Beach Seaport and conducted analyses of catalytic converters taken from Respondents’ vehicles. Mr. Wang may testify as a fact witness about his inspections of Respondents’ vehicles and analyses of catalytic converters taken from Respondents’ vehicles.
6. Sam King, ERG. Mr. King was an ERG employee who has conducted analyses of catalytic converters taken from Respondents’ vehicles. Mr. King may testify as a fact witness about his analyses of catalytic converters taken from Respondents’ vehicles.

7. Brent Ruminski, ERG. Mr. Ruminski is an ERG employee who has conducted analyses of catalytic converters taken from Respondents' vehicles. Mr. Ruminski may testify as a fact witness about his analyses of catalytic converters taken from Respondents' vehicles.
8. Cassidy Owen, ERG. Mr. Owen is an ERG employee who has conducted analyses of catalytic converters taken from Respondents' vehicles. Mr. Owen may testify as a fact witness about his analyses of catalytic converters taken from Respondents' vehicles.
9. Nathan Dancher, EPA Region 9. Mr. Dancher is an Environmental Engineer with EPA Region 9 who has inspected entries of Respondents' vehicles at the Los Angeles/Long Beach Seaport. Mr. Dancher may testify as a fact witness about his inspections of Respondents' vehicles.
10. Peter Husby, EPA Region 9 Laboratory. Mr. Husby is the Lab Project Manager for EPA Region 9's Laboratory. The EPA Region 9 Laboratory analyzed the composition of catalytic converters taken from Respondents' vehicles during inspections conducted at the Los Angeles/Long Beach Seaport. Mr. Husby oversaw the EPA Region 9 Laboratory's analysis, and may testify as a fact witness about the analysis.
11. Jennifer Suggs, EPA, National Enforcement Investigations Center ("NEIC"). Ms. Suggs is a Chemist at EPA's NEIC. Ms. Suggs has experience with methods of analyzing the content of catalytic converters. Ms. Suggs may testify as a fact witness about analyses of catalytic converter washcoat samples analyzed by NEIC.
12. Benjamin Burns, EPA, NEIC. Mr. Burns is a Chemist at EPA's NEIC. Mr. Burns has experience with methods of analyzing the content of catalytic converters. Mr. Burns may testify as a fact witness about analyses of catalytic converter washcoat samples analyzed by NEIC.
13. Stan Culross, Lotus Engineering, Inc. ("Lotus"). Mr. Culross was the Emission Lab Manager at Lotus. Lotus conducted emissions testing on a vehicle from Respondents' engine family ETAOC.049MC2, pursuant to a confirmatory test order issued by EPA's Office of Transportation and Air Quality. Mr. Culross may testify as a fact witness about the emissions testing of Respondents' vehicle conducted by Lotus.
14. Dr. Ronald Heck, RMH Consulting. Dr. Heck holds a Ph.D. in Chemical Engineering from the University of Maryland. Dr. Heck has over forty years of experience in the field of catalyst technology. During his career he has received numerous honors and awards, and has developed thirty-six patents. Dr. Heck also has an extensive number of publication credits, and co-authored a leading book on catalytic air pollution control technology. Dr. Heck may be qualified to testify as an expert on catalytic converter design and catalytic air pollution control technology, and to provide opinion testimony about how alterations in precious metal content may impact the efficacy and longevity of catalytic converters. Dr. Heck's resume is included in Complainant's exhibits and is marked as CX158.
15. Dr. John Warren, Senior Statistician, Enterprise Quality Management Division ("EQMD"), Office of Enterprise Information Programs ("OEIP"), Office of Environmental Information ("OEI"), EPA. Dr. Warren holds a Ph.D. in Statistics from North Carolina State University. Dr.

Warren has over 30 years' experience as a statistician with the EPA, and during that period has provided statistical expertise to EPA workgroups in all major areas of environmental data collection and interpretation. This includes experience in statistical methodology and techniques used to support standards, rules, and regulations developed by the EPA. Dr. Warren has also served as adjunct professor at the American University, Department of Mathematics and Statistics, and as a faculty member at the North Carolina State University, Department of Statistics. Dr. Warren may be qualified to testify as an expert on statistical analyses of the results of precious metal analyses conducted on catalytic converters taken from Respondents' vehicles, and whether the catalytic converters analyzed may be representative of catalytic converters in vehicles across respective engine families relevant to this matter. Dr. Warren's resume is included in Complainant's exhibits and is marked as CX157.

16. Dr. James Carroll, CPA. Dr. Carroll holds an MBA in Finance from Rutgers University, and a Doctorate in Business Administration from Nova Southeastern University. Dr. Carroll is also a Certified Public Accountant, Certified Management Accountant, Certified Fraud Examiner, Certified Financial Manager, a Chartered Global Management Accountant, and is Certified in Financial Forensics. Dr. Carroll may be qualified to testify as an expert on matters concerning the Clean Air Act civil penalty factor, "the effect of the penalty on the violator's ability to continue in business," and other matters concerning Respondents' finances and accounting. Dr. Carroll's resume is included in Complainant's exhibits and is marked as CX159.

B. Documents and Exhibits

See Exhibit CX000, titled "Complainant's Prehearing Exhibits," for a list of the exhibits that Complainant may introduce at hearing. Copies of the exhibits are provided in tandem with this Initial Prehearing Exchange. Each exhibit is labeled as prescribed by the Prehearing Order, and the pages of each exhibit are bates-stamped in sequential numerical order.

C. Location of Hearing

Complainant requests that the hearing in this matter be held in Washington, District of Columbia, because it is the city in which the Complainant, and the Office of Administrative Law Judges are located, and because Complainant's chief witnesses are located nearby or can readily travel to this location.

D. Estimate of Time to Present Direct Case

Complainant estimates that the time needed to present its direct case, should all or the majority of its named witnesses be called to testify, would be approximately six (6) Days. Complainant may

amend this estimate if it learns of additional relevant information that could complicate or lengthen Complainant's presentation, or if Respondents agree to stipulate to matters and thereby simplify or shorten Complainant's presentation.

E. Statement Concerning Allegations Denied or Otherwise Not Admitted by Respondents

Notwithstanding their denials, Respondents' admissions show they are persons and manufacturers as defined by sections 216(1) and 302(e) of the Clean Air Act (the "Act" or the "CAA"), 42 U.S.C. §§ 7550(1), 7602(e). *See* Respondents' Amended Answers at ¶¶ 7–9, 11, 24 (denying that Respondents are "persons" or "manufacturers" subject to the Act). The Act defines a person to include a "corporation, partnership, [or] association." 42 U.S.C. § 7602(e). Respondents have admitted that Taotao USA, Inc. ("T-USA" or "Taotao USA") is a corporation organized under the laws of Texas, and that Taotao Group Co., Ltd. ("T-Group" or "Taotao Group") and Jinyun County Xiangyuan Industry Corp., Ltd. ("JCXI"), are corporations organized under the laws of the People's Republic of China. *See* Respondents' Amended Answers at ¶¶ 4–6. Each Respondent therefore meets the Act's definition of a "person." Similarly, the Act defines a manufacturer to include "any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale." 42 U.S.C. § 7550(1). Respondents have admitted that T-USA "imports highway motorcycles manufactured by Taotao Group and recreational vehicles manufactured by JCXI into the USA." *See* Respondents' Amended Answers at ¶ 10. Each Respondent meets the Act's definition of a "manufacturer."

Further, Complainant submits that the proposed testimony and exhibits will demonstrate by the preponderance of the evidence that Respondents are liable for the violations alleged and that the proposed penalty is appropriate. Specifically, the evidence will show that Respondents T-USA or JCXI manufactured, and T-USA imported for sale, each vehicle identified in the Amended Complaint. The

evidence, including evidence gathered from EPA inspections and laboratory analyses, will show that those vehicles were equipped with catalytic converters built differently than the catalytic converters described in the applications for Certificates of Conformity Respondents submitted for the vehicles. The evidence will show that the difference was material, i.e., it “reasonably may be expected to affect emission controls.” *See United States v. Chrysler Corp.*, 591 F.2d 958, 960 (D.C. Cir. 1979). Because the vehicles did not conform in all material respects to the design specifications described in the applications for certification, the vehicles were not covered by the Certificates of Conformity, and were therefore imported, sold, offered for sale, or delivered for introduction into commerce in the United States in violation of sections 203(a)(1) and 213(d), 42 U.S.C. §§ 7522(a)(1), 7547(d).

F. Proposed Penalty Calculation

Complainant seeks a civil penalty of \$1,698,432.43 against Taotao USA, Inc. (“T-USA” or “Taotao USA”) and Taotao Group Co., Ltd. (“T-Group” or “Taotao Group”), jointly and severally, for the 67,527 violations alleged in Counts 1 through 4 of the Amended Complaint, and a civil penalty of \$1,597,123.89 against Taotao USA and Jinyun County Xiangyuan Industry Co., Ltd. (“JCXI”), jointly and severally, for the 42,437 violations alleged in Counts 5 through 10 of the Amended Complaint, for a total civil penalty of \$3,295,556.32 for the 109,964 violations of sections 203(a)(1) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7522(a)(1), 7547(d), identified in Counts 1 through 10 of the Amended Complaint.¹ The penalty was calculated according to the EPA’s Clean Air Act Mobile Source Civil

¹ T-USA and T-Group manufactured, imported, offered for sale, or introduced or delivered for introduction into commerce the highway motorcycles identified in Counts 1 through 4 and are jointly liable for the violations alleged in those Counts. *See* 42 U.S.C. § 7550(1) (defining “manufacturer” to include manufacturers and importers). T-USA imported and JCXI manufactured, offered for sale, or introduced or delivered for introduction into commerce the recreational vehicles identified in Counts 5 through 10, and are jointly liable for the violations alleged in those Counts. *See id.*; 42 U.S.C. § 7547(d) (standards applicable to nonroad vehicles shall be enforced in the same manner as those for motor vehicles).

Penalty Policy, included as Exhibit CX022, and available to the public at http://www2.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy_0.pdf (last visited August 9, 2016) (hereinafter the “Penalty Policy”), as amended to account for inflation,² and in consideration of the statutory factors identified in CAA § 205(c)(2), 42 U.S.C. § 7524(c)(2). When calculating the penalty, the Complainant rounded all monetary figures down to the nearest cent. As described below, consistent with the Penalty Policy, the proposed penalty consists of two components: the economic benefit penalty component, and the gravity penalty component. Penalty Policy at 3. A worksheet illustrating the Complainant’s penalty calculation is included as Exhibit CX160.

The economic benefit was calculated using the rule of thumb method provided under the Penalty Policy, which calculates economic benefit based on vehicles’ or engines’ horsepower. *Id.* at 8–9. Using

² The statutory maximum civil penalty level has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, Pub. L. No. 101-410, 104 Stat. 890 (1990), the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 note, Pub. L. No. 104-134, 110 Stat. 1321-373 (1996), and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note, Pub. L. No. 114-74, § 701, 129 Stat. 599 (2015) (the “Improvement Act of 2015”). The EPA has implemented these inflation adjustments by periodically updating maximum penalty levels as codified at 40 C.F.R. § 19.4, and adjusting its penalty policies. *See* Civil Monetary Penalty Inflation Rule, 78 Fed. Reg. 66,643 (Nov. 6, 2013) (adjusting penalties for inflation); Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective December 6, 2013) (*included as Exhibit CX023 and available at <https://www.epa.gov/sites/production/files/201401/documents/guidancetoamendepapenaltypolicyforinflation.pdf>* (last visited August 9, 2016)) (hereinafter the “2013 Inflation Policy”) (amending EPA penalty policies to reflect 2013 inflation adjustments).

On July 1, 2016, EPA issued an interim final rule adjusting statutory maximum civil penalties according to formulas prescribed under the Improvement Act of 2015. *See* Civil Monetary Inflation Adjustment Rule, 81 Fed. Reg. 43,091 (July 1, 2016). For violations occurring after November 2, 2015, the maximum civil penalty per violation of the Clean Air Act under 42 U.S.C. § 7524(c)(1) increases to \$44,539. *Id.* at 43,095. The rule also adjusts the administrative penalty cap under 42 U.S.C. § 7524(c)(1) upward to \$356,312. *Id.* at 43,092, 43,095. On July 27, 2016, EPA issued guidance revising its penalty policies to incorporate the 2016 interim final rule. *See* Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective August 1, 2016) (*included as Exhibit CX024 and available at <https://www.epa.gov/sites/production/files/2016-07/documents/finalpenaltyinflationguidance.pdf>* (last visited August 9, 2016)) (hereinafter the “2016 Inflation Policy”).

this method, because all of the Respondents' vehicles have engine under ten (10) horsepower in size, the minimum economic benefit of \$15 was assessed for each vehicle or engine that has not been remediated. *See id.* at 9 (economic benefit should be “no smaller than \$15 per engine, regardless of the engine’s size”).³

The gravity component was calculated consistent with the Penalty Policy by first assessing the base per-vehicle gravity penalty, scaled for the horsepower of each vehicle. *Id.* at 16. Because all of the engines in this case are under ten (10) horsepower in size, the base per-vehicle gravity was calculated using a multiplier of \$80 per unit of horsepower. *Id.* The base per-vehicle gravity was then adjusted for the egregiousness of the violation. *Id.* at 17. The egregiousness factor used for vehicles “where excess emissions are likely to occur” or where “there is no information about the emissions” is the “major” egregiousness multiplier of 6.5.⁴ *Id.* at 13, 17. This multiplier was used for Counts 1 and 2 because vehicles from those families produced emissions in excess of Clean Air Act standards during emissions testing, and for Counts 9 and 10 because the EPA does not have information about emissions from these engine families. The remainder of the counts were assessed only for moderate egregiousness. Moderate egregious violations use a multiplier of 3.25. *Id.* at 17.

Second, the base per-vehicle gravity penalty was scaled based on the total number of vehicles in violation. *See id.* at 15, 18. Under the Penalty Policy, the scaling process involves applying decreasing

³ The Respondents remediated 66 of the vehicles under Counts 9 and 10. These vehicles were stopped at the point of importation, and on information and belief have not been sold in the United States. This is a basis to consider these vehicles “remediated” under the Penalty Policy, and consequently no economic benefit has been assessed for these vehicles. Penalty Policy at 9.

⁴ “The most egregiousness category [sic] of violations, ‘Major,’ applies to violations where excess emissions are likely to occur. For example, engines with missing or defective catalytic converters would be expected to have emissions that are greater than those on which proper catalytic converters had been installed.” Penalty Policy at 13.

multipliers to incrementally larger numbers of vehicles in violation, when ranked in order from largest to smallest adjusted base per-vehicle gravity, with the effect of reducing the net per-vehicle gravity penalty. *See id.* at 18–20. Counts 9 and 10 were scaled separately from Counts 1 through 8 because the vehicles at issue in Counts 9 and 10 were found being imported after the Notice of Violation was issued in 2014.⁵

The total gravity component attributable to all but the 66 remediated vehicles from Counts 9 and 10 (*see supra* n.3) was next adjusted upward by 30% for failure to remediate the vehicles in violation. Penalty Policy at 20. At no time prior to or after receipt of the Notice of Violation did T-USA or T-Group attempt to remediate, i.e., export vehicles in inventory or recall vehicles already sold, the 67,527 violations alleged in Counts 1 through 4. The same can be said for T-USA and JCXI as to 42,371 of the 42,437 violations alleged in Counts 5 through 10. As described in the Penalty Policy, the adjustment for failure to remediate was calculated by determining the average per-vehicle gravity for each count after scaling, multiplying the average per-vehicle gravity by the number of unremediated vehicles, and then adding 30% of that result to the total gravity component. *See id.*

Next, the total gravity component was adjusted for inflation as described by the EPA’s 2013 Inflation Policy and 2016 Inflation Policy. *See supra* n.1. Consistent with the 2013 Inflation Policy, the gravity calculations for Counts 1 through 8 were not adjusted for inflation because the violations alleged in those Counts may have occurred prior to December 7, 2013, and because the Penalty Policy was issued after January 12, 2009. *See* 2013 Inflation Policy at 4, 6. The gravity calculation for Count 9 was adjusted to reflect that the violations alleged in that Count occurred in multiple inflationary periods, and so are subject to both the 2013 Inflation Policy and 2016 Inflationary Policy. *See* 2013 Inflation Policy

⁵ “The litigation team . . . has the discretion to ‘group’ violations, and re-start the scaling factor in Table 3 for each group.” Penalty Policy at 18.

at 4 (how to calculate inflation-adjusted penalty); 2016 Inflation Policy at 4 (same). Of the violations alleged in Count 9, 1,251 of the violations occurred after December 6, 2013, but on or before November 2, 2015, so the percentage of the gravity component representing these violations was adjusted for inflation by using a multiplier of 1.0487. *See* 2013 Inflation Policy at 4. The remaining 39 violations occurred after November 2, 2015, so the percentage of the gravity component representing these violations was adjusted for inflation by using a multiplier of 1.10020. 2016 Inflation Policy at 4, 9. For Count 10, all of the violations occurred after November 2, 2015, so the entire gravity component was adjusted for inflation by using a multiplier of 1.10020, as described by the 2016 Inflation Policy. *Id.*

Finally, consistent with the Penalty Policy, the total inflation-adjusted gravity component was adjusted upward for willfulness and negligence, and for history of non-compliance. Penalty Policy at 23–26; *see* 2016 Inflation Policy at 4 (describing application of aggravating or mitigating factors). The Complainant adjusted the gravity penalty upward to 20% due to Respondents’ history of non-compliance. *See* Penalty Policy at 25–26. T-USA has previously violated Title II of the Clean Air Act, as evidenced by the 2010 Administrative Settlement Agreement (ASA), included as Complainant’s Exhibit CX067. The ASA addressed a large number of violations, concerning 3,768 vehicles, which were similar to the violations at issue in this matter. Further, the ASA imposed continuing obligations that T-USA failed to meet. The Penalty Policy contemplates that these factors weigh in favor of a large penalty increase. *Id.* at 25–26. Complainant also adjusted the penalty upward by an additional 20% to account for the Respondents’ willfulness and negligence. *See Id.* at 23–24, 26. The ASA included a Vehicle and Engine Compliance Plan that required T-USA to, among other things, conduct pre-importation catalyst testing to ensure that the catalytic converters equipped on their production vehicles conformed to the specifications included in Respondents’ applications for Certificates of Conformity. *See* CX067 at Bates Numbers EPA-000814 to EPA-000815, EPA-000828 to EPA-000832. After

entering into the ASA, T-USA proceeded to import vehicles equipped with nonconforming catalytic converters.

In calculating this penalty, Complainant did not adjust the penalty for Respondents' degree of cooperation or non-cooperation, nor did Complainant adjust the penalty to reflect the size of Respondents' businesses. *See* Penalty Policy at 21–22, 24–25. Based on Respondents' public statements regarding their financial condition, and Respondents' importation history, Complainant has determined that Respondents' have the ability to pay the proposed penalty. *See id.* at 27 (factors concerning ability to pay); CX035 (boasting of global sales and revenues exceeding \$100 million); CX040 (interview with Matao Cao regarding Taotao's sales financial condition and market share); *see also* 42 U.S.C. § 7524(c)(2) (statutory penalty factors). However, based on Respondents' history of violation and other circumstances surrounding the violations alleged in the Amended Complaint, Complainant has determined that a large penalty is justified even if it does put Respondents in severe financial distress. *See* Penalty Policy at 27 (“EPA reserves the option . . . of seeking a penalty that might put a company in severe financial distress.”) Complainant therefore did not adjust the penalty based on its potential effect on Respondents' ability to continue in business.

For the foregoing reasons, the Complainant respectfully requests that the Tribunal assess a civil penalty of \$1,698,432.43 against T-USA and T-Group, jointly and severally, for the 67,527 violations alleged in Counts 1 through 4, and assess a civil penalty of \$1,597,123.89 against T-USA and JCXI, jointly and severally, for the 42,437 violations alleged in Counts 5 through 10, for a total penalty against the Respondents of \$3,295,556.32 for the 109,964 violations of Title II of the Clean Air Act identified in Counts 1 through 10 of the Amended Complaint.

G. Guidance, Policies, or Preamble Statements

Copies of all guidance and policy documents that Complainant may rely on or refer to during the hearing have been included with Complainant's exhibits and are referenced in Complainant's Exhibit CX000.

Respectfully Submitted,

8/25/16
Date



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Aug. 25, 2016
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CERTIFICATE OF SERVICE

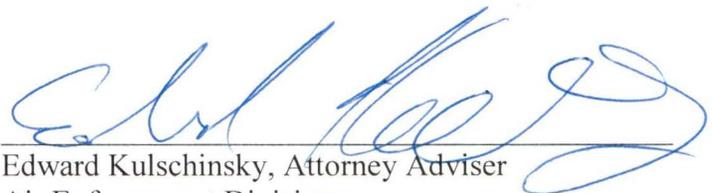
I certify that the foregoing Complainant's Initial Prehearing Exchange in the Matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065, together with Complainant's Proposed Exhibits that do not contain CBI, were filed this day electronically using the EPA Office of Administrative Law Judges' E-Filing System. In addition, the original and two copies of Complainant's Initial Prehearing Exchange, two full sets of Complainant's Proposed Exhibits, and one set of Complainant's Proposed Exhibits from which exhibits containing CBI have been omitted, were filed this day by hand delivery to the Headquarters Hearing Clerk in the EPA Office of the Headquarters Hearing Clerk at the address listed below:

U.S. Environmental Protection Agency
Office of the Headquarters Hearing Clerk
1300 Pennsylvania Ave., NW, MC-1900R
Ronald Reagan Building, Room M1200
Washington, DC 20004

I certify that three copies of Complainant's Initial Prehearing Exchange, and, with the consent of Respondents' counsel, one compact disc containing a full set of Complainant's Proposed Exhibits in an electronic format, were sent this day by certified mail, return receipt requested, for service on Respondents' counsel at the address listed below:

William Chu, Esq.
The Law Offices of William Chu
4455 LBJ Freeway, Suite 909
Dallas, TX 75244

Aug. 25, 2016
Date


Edward Kulschinsky, Attorney Adviser

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