

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

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

**RESPONSE TO COMPLAINANT’S MOTION FOR ADDITIONAL DISCOVERY THROUGH REQUESTS
FOR PRODUCTION AND INTERROGATORIES**

COME NOW Respondents Taotao USA, Inc. (Taotao USA), Taotao Group Co., Ltd. (Taotao Group), and Jinyun County Xiangyuan Industry Co. Ltd. (“JCXI”) and file their Response to Complainant’s Motion for Additional Discovery Through Requests for Production and Interrogatories.

On August 25, 2017, Complainant filed a Motion for Additional Discovery Through Requests for Production and Interrogatories (“Motion”) requesting additional discovery to determine whether Respondents’ received a “Beyond BEN Benefit” or “BBB” from importing/selling uncertified vehicles or engines. Motion at 4. Complainant alleges (1) information pertaining to BBB has significant probative value on disputed issues of material fact relevant to penalty; and (2) that Respondents’ have challenged Penalty Policy’s rule-of-thumb estimate of economic benefit, but to support their challenge have only produced the Shefftz Report, which assesses economic benefit only through the narrow lens of application of the BEN model. Contrary to Complainant’s foregoing allegations, Respondents’ have produced more than the Shefftz Report to assess economic benefit, and there is no probative value of the requested information as it pertains to BBB because the there is nothing in the record to suggest that the violations in this matter include BBB.

1. There is no probative value to the information sought to consider a BBB in this matter, nor has Complainant disputed that the business transactions would not have occurred but for the “illegal conduct” and/or competitive advantage.

According to the Penalty Policy, BBB reflects the benefits to the violator from business transactions that would not have occurred but for the illegal conduct, and/or the competitive advantage the violator obtained in the marketplace as compared to companies that have complied with the motor vehicle emission control laws and regulations. *See* Clean Air Act Mobile Source Penalty Policy (“Penalty Policy”) at 7. Complainant is relying on the foregoing category of benefit in seeking information to be used in consideration of a possible BBB in this matter. Motion at 4. However, there is nothing in the record to even suggest that Respondents’ business transactions of importing and selling the vehicles would not have occurred if the catalytic converters installed on the subject vehicles were accurately described in their respective COC applications. Stated differently, regardless of the catalytic converter compositions listed on the subject vehicles’ COC application, the applications would have been approved so long as the subject vehicles passed emission tests. *See* Second Motion to Supplement the Prehearing Exchange and Combined Response Opposing Respondents’ Motion to Dismiss for Failure to State a Claim and Motion for Accelerated Decision (“Combined Response”) at 12. In the Combined Response, Complainant admitted that EPA has not prescribed specific standards for the content of catalytic converters, and made clear that it was Respondents’ own standards that they set for themselves that caused the violation. *Id.* Clearly, Respondents’ could have set any standards for themselves, i.e. they could have, on each COC applications, described the catalytic converters that were installed on the vehicles that were imported and sold; or they could have purchased the catalytic converters described on the COC applications from a different catalytic converter manufacturer. Respondents could have also changed their production vehicles to be different from those described in the COC

application, once they discovered that the catalytic converters were not accurately described in the COC applications, and notified EPA of the change, however, there is no evidence in the record to suggest that Respondents' had any knowledge that the catalytic converters described in their COC applications did not match those installed on the production vehicles.

On the other hand, the evidence does shows that the uncertified vehicles passed emissions, and so had Respondents' discovered the change, or accurately listed the catalytic converter concentrations in their COC application, there is no dispute that the COC applications would have been approved. *See* CX099-CX122; RX018-RX019. Because EPA does not have any standards for catalytic converter compositions; and Respondents' simply listed the catalytic converter compositions that were provided, after catalytic converter testing, from the catalytic converter manufacturers and there is no dispute that Respondents' COC applications which purportedly covered the subject vehicles would not have been approved, had the correct concentrations been listed on the application, there is no reasonable explanation for why Complainant seeks to consider BBB, i.e. information showing that Respondents' business transactions would not have occurred but for the illegal conduct or that Respondents gained any competitive advantage from providing an incorrect catalytic converter description. Nothing in the record shows that Respondents gained any competitive advantage from the violations. Accordingly, the Motion so far as it seeks information to calculate the BBB should be denied. Complainant is merely fishing for information that has no probative value to any disputed fact, and unnecessarily burdening Respondents' with these discovery motions.

2. Respondents have provided sufficient evidence to calculate the economic benefit component of the Penalty Policy.

In response to Complainant's allegation that the Shefftz report is the only evidence of economic benefit Respondents have provided, Respondents point to the following exhibits

attached to their First Motion to Supplement the Prehearing Exchange: RX14-RX16. The exhibits include invoices for catalytic converters in fact purchased by Respondents and quotes from other catalytic converter manufacturers for catalytic converters in certified concentrations. The evidence the expert relied upon in his report has been included in the prehearing exchange. Complainant is seeking information protected by attorney-client and work product privilege. Even if any information requested by Complainant is not protected by privilege, there is no reason why Complainant's cannot obtain the information from the expert in the deposition Complainant moved for, and the presiding Officer granted. *See* Complainant's Motion to Take Depositions at 8-9; Order Granting Complainant's Motion to take Depositions.

PRAYER

For the foregoing reasons, Respondents pray that the Presiding Officer deny Complainant's Motion for Additional Discovery Through Requests for Production and Interrogatories.

Respectfully Submitted,



09/14/2017
Date

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CERTIFICATE OF SERVICE

This is to certify that the foregoing instrument in the Matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065, was filed and served on the Presiding Officer this day through the Office of Administrative Law Judge's E-Filing System.

I certify that a copy of the foregoing instrument was sent this day via electronic mail to the following e-mail addresses for service on Complainant's counsel: Edward Kulschinsky at Kulschinsky.Edward@epa.gov, Robert Klepp at Klepp.Robert@epa.gov, and Mark Palermo at Palermo.Mark@epa.gov.

Respectfully Submitted,



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Date

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