

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

RECEIVED BY OALJ
2017 AUG 21 12:57

In the Matter of:)
)
Taotao USA, Inc.,)
Taotao Group Co., Ltd., and)
Jinyun County Xiangyuan Industry Co., Ltd.)
)
Respondents.)

Docket No. CAA-HQ-2015-8065

**COMPLAINANT'S FIFTH MOTION TO SUPPLEMENT THE PREHEARING
EXCHANGE**

The Director of the Air Enforcement Division of the U.S. Environmental Protection Agency's Office of Civil Enforcement ("Complainant") files this Fifth Motion to Supplement the Prehearing Exchange pursuant to section 22.19(f) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), the Hearing Notice and Order issued by this Tribunal on May 9, 2017, and the Order on Respondents' Motion for Continuance of the Hearing issued by this Tribunal on June 27, 2017. Complainant has conferred with Respondents' counsel, and Respondents intend to oppose this Motion.

The Consolidated Rules direct parties to supplement their prehearing exchange whenever they learn that the exchange was incomplete, inaccurate, or outdated. 40 C.F.R. § 22.19(f). Complainant requests leave to add to its Prehearing Exchange a standalone amendment to the report of Dr. James J. Carroll, which is marked as CX194.

Dr. James Carroll is a Certified Public Accountant ("CPA") that Complainant retained in this matter to evaluate information with respect to the ability of Taotao USA, Inc. ("Taotao") to

pay the proposed penalty for the violations of the Clean Air Act identified in the Amended Complaint.¹ Complainant identified Dr. Carroll in its Initial Prehearing Exchange, and has stated that 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,’ including financial evaluation, . . . Respondents’ federal tax returns for years 2012 through 2015, . . . and other matters concerning Respondents’ finances and accounting.” Complainant’s Initial Prehearing Exchange at 6; Complainant’s Third Mot. to Supp. the Prehearing Exchange at 4. Complainant has also provided a report prepared by Dr. Carroll summarizing his opinion that Taotao has the ability to pay the proposed penalty in this matter. *See* CX192.

The proposed amendment to Dr. Carroll’s report compares the declared value of Taotao’s importations with the dollar value of purchases reported in Taotao’s federal tax returns. The importation data is from the United States Customs and Border Patrol’s (“CBP”) Automated Commercial Environment (“ACE”) database for 2012 through 2015. Complainant provided this information in the Initial Prehearing Exchange and updated it to include information from 2016, the most recent year available. *See* CX190A. The ACE database tracks the number of entries imported into the United States (“Count of Entry”), the quantity of imported items, and the sum of the declared value of the imports provided to CBP by Taotao. The table in CX190A shows annual aggregated information for Taotao for each successive year starting from 2009 through 2016. “Purchases” data is information taken from Taotao’s income tax returns for each year from 2012 through 2015. Complainant provided tax returns for 2012 through 2015 in the Prehearing

¹ On August 17, 2017, this Tribunal granted Complainant’s Fourth Motion to Supplement the Prehearing Exchange, which inter alia revised the gravity portion of the penalty calculation and the total civil penalty to \$3,030,320. *See* Order on Complainant’s Fourth Motion to Supplement the Prehearing Exchange, dated August 17, 2017.

Exchange. *See* CX161 (2012 federal tax return); CX162 (2013 federal tax return); CX163 (2014 federal tax return); and CX171 (2015 federal tax return).²

Dr. Carroll opines that “[u]nless there is something unexplained happening, for an import business such as Taotao USA” the declared value of the imports reported in ACE and the value of “purchases” reported within its tax returns should be similar in size. Dr. Carroll compares the values for each year and shows that they are different to the extent that when averaged over the four-year period, the declared value of imports are approximately 2.8 times higher than the value of purchases reported in Taotao’s federal tax returns. Dr. Carroll states that based on the information further investigation is appropriate on this matter. This comparison is relevant to Taotao’s financial condition, and was not provided as part of Dr. Carroll’s report.

Granting this Motion requesting to supplement the prehearing exchange will not cause Respondents undue surprise or prejudice. Respondents were on notice that Dr. Carroll will testify at the hearing with respect to Taotao’s financial condition and ability to continue in business, and the amendment to his expert report is based on information already in the prehearing exchange. Respondents are scheduled to take Dr. Carroll’s deposition on August 28, 2017,³ and Respondents will have the opportunity to depose him about the content of the amendment to his report. The amendment to the report is short, and providing it now should not prejudice Respondents’ ability to conduct the deposition.

² Complainant has sought through discovery in the form of requests for admission to ascertain that these Exhibits are true, accurate, and complete copies of the originals. *See* Order Granting Complainant’s Motion for Additional Discovery Through Requests for Admissions, dated August 17, 2017.

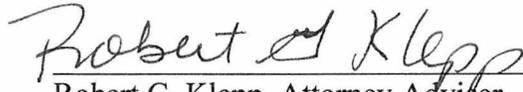
³ At this time, Respondents’ counsel has not yet served Complainant with a copy of the written notice of deposition of Dr. Carroll, required by the Order on Respondents’ Motion to Take Depositions, dated July 7, 2017.

Conclusion

Complainant requests the Tribunal grant this Fifth Motion to Supplement the Prehearing Exchange.

Respectfully Submitted,

8/24/17
Date


Robert G. Klepp, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., N.W.
William J. Clinton Federal Building
Room 1111A, Mail Code 2242A
Washington, DC 20460
(202) 564-5805
klepp.robert@epa.gov

8/21/2017
Date


Edward Kulschinsky, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., NW
William J. Clinton Federal Building
Room 1142C, Mail Code 2242A
Washington, DC 20460
(202) 564-4133
kulschinsky.edward@epa.gov

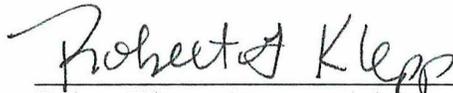
CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Fifth Motion to Supplement the Prehearing Exchange in the Matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065, with CBI omitted, was filed this day electronically using the EPA Office of Administrative Law Judges' E-Filing System. In addition, three copies of proposed Exhibit CX194, were filed this day by hand delivery to the Headquarters Hearing Clerk in the EPA's 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 an electronic copy of Complainant's Fifth Motion to Supplement the Prehearing Exchange, with CBI protected by password, was sent this day for service by electronic mail to Respondents' counsel: William Chu at wmchulaw@aol.com; Salina Tariq at stariq.wmchulaw@gmail.com; and David Paulson at dpaulson@gmail.com.

8/21/17
Date



Robert Klepp, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., NW
William J. Clinton Federal Building
Room 1111A, Mail Code 2242A
Washington, DC 20460
(202) 564-5805
klepp.robert@epa.gov

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 AND PERSONALLY IDENTIFIABLE
INFORMATION ASSERTED**

The exhibit submitted with Complainant’s Fifth Motion to Supplement the Prehearing Exchange contains material claimed to be confidential business information (“CBI”) pursuant to 40 C.F.R. § 2.203(b). The material claimed as CBI is Complainant’s Exhibit CX194, Amendment to Report of Dr. James J. Carroll CPA.

A complete filing in which the exhibit containing CBI is included has been filed with the Hearing Clerk. If you have any questions, please contact Robert Klepp, at klepp.robert@epa.gov, or at (202) 564-5805.

CX194

**Amendment to Report of Dr. James J.
Carroll CPA**

Bates EPA-002592 to EPA-002593

**Claimed as Confidential Business
Information Pursuant to
40 C.F.R. § 2.203(b)**

**A complete copy of this document has
been filed with the Hearing Clerk.**

