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 Fourth 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 revised Exhibit CX190, marked CX190A. Exhibit CX190, which was initially filed with Complainant's Third Motion to Supplement the Prehearing Exchange, was not marked as CBI or filed under seal, even though it contains information that should be treated as CBI. Complainant is therefore requesting leave to replace CX190 with CX190A, which has been amended to be marked as CBI. This exhibit is therefore filed under seal pursuant to 40 C.F.R. § 22.5(d).

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.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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

COMPLAINANT'S FOURTH 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 Fourth 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 attempted to confer with Respondents' counsel to determine whether counsel would oppose this Motion but was unable to make contact prior to filing.

The Consolidated Rules direct parties to supplement their prehearing exchanges whenever they learn that the exchange was incomplete, inaccurate, or outdated. 40 C.F.R. § 22.19(f). Complainant requests leave to: (A) amend the brief narrative summary of the expected testimony of potential witnesses Cleophas Jackson and Amelie Isin,, listed in Complainant's Initial Prehearing Exchange; (B) strike potential witnesses along with their related narrative descriptions of testimony; (C) revise the proposed penalty narrative (see Attachment A) and penalty calculation worksheet (see CX193) to

characterize Counts 1 and 2 as being of "moderate" egregiousness rather than "major," and to calculate the gravity penalty for Count 6 using a lower horsepower rating to reflect the presence of multiple models in the engine family; and (D) update Complainant's Exhibit CX190 to identify it as Confidential Business Information ("CBI") and place it under seal. Complainant is making revisions A through C to the prehearing exchange for the purpose of streamlining the factual disputes that need to be addressed at the penalty hearing in this proceeding. Complainant is making revision D to the prehearing exchange to identify and protect information that should be treated as CBI, but was inadvertently filed without CBI identification.

A. Requested Amendment to Potential Witness Brief Narrative Summary of Testimony

The Prehearing Order issued by this Tribunal on May 11, 2016, directed the Parties, among other things, to provide to the Tribunal and each other:

> A list of names of the expert and other witnesses intended to be called at hearing, identifying each as a fact witness or an expert witness, a brief narrative summary of their expected testimony, and a curriculum vitae or resume for each identified expert or a statement that no witnesses will be called.

Prehearing Order, at 2. Complainant intends to call the following witnesses in its direct case at the penalty hearing: Cleophas Jackson, Amelie Isin, and Dr. James J. Carroll. Complainant now requests permission to amend the narrative summary of these witnesses' testimony to more accurately reflect what they will testify about at the penalty hearing. Complainant seeks leave to amend the brief narrative summary of expected testimony by Cleophas Jackson in Complainant's Third Motion to Supplement Prehearing Exchange as follows:

Cleophas Jackson:

> 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 EPA's Clean Air Act vehicle and engine regulatory program, COC applications, carryover data and confirmatory testing, running changes, selective enforcement audits, the application process, the program harm caused by the types of violations identified in the Amended Complaint, and annual production reports. Mr. Jackson may also testify about Respondents' COC applications and decisions pertaining to those applications, communications he and his staff have had with Respondents and Respondents' closely-related entities, Respondents' relationship to other entities, and observations he and his staff made during a visit to Respondents' manufacturing facility in China. Mr. Jackson may also be qualified to testify as an expert about the EPA's Clean Air Act vehicle and engine regulatory program. Mr. Jackson's resume is included in Complainant's exhibits and is marked as CX156A.

Complainant seeks leave to amend the brief narrative summary of expected testimony by Amelie Isin in Complainant's Third Motion to Supplement the Prehearing Exchange as follows:

Amelie Isin:

> 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 about matters related to the calculation of the proposed civil penalty and the application of the Agency's Clean Air Act Mobile Source Civil Penalty Policy ("Penalty Policy"), including information Complainant considered when evaluating the following penalty factors: the gravity of the violation; the economic benefit resulting from the violation; Respondents' import history; the impact of the penalty on Respondents' ability to continue in business; Respondents' history of compliance; Respondents' degree of cooperation; Respondents' degree of willfulness or negligence; and remediation. 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, and the penalty calculation under the Penalty Policy. Ms. Isin's resume is included among Complainant's exhibits and is marked as CX155.

While Complainant does not seek to amend Dr. Carroll's brief narrative of expected testimony at this time, for ease of reference the narrative in the Third Motion to Supplement the Prehearing Exchange is provided below:

Dr. James Carroll:

> 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," including financial evaluation, ratio analysis, generally accepted accounting principles, hybrid accounting, Respondents' federal tax returns for years 2012 through 2015, appropriate financial sheet adjustments that stem from differences in the accounting conventions used by Taotao USA, Inc. for tax reporting from the Generally Accepted Accounting Principles ("GAAP") typically used by other companies with the same Business Activity/North American Industrial Classification System ("NAICS") code, and other matters concerning Respondents' finances and accounting. Dr. Carroll's resume is included in Complainant's exhibits and is marked as CX159.

B. Request to Strike Potential Witnesses

Potential expert witnesses Dr. John Warren and Dr. Ronald Heck[1], and potential fact witnesses Mario Jorquera, Andrew Loll, Colin Wang, Sam King, Brent Ruminski, Cassidy Owen, Nathan Dancher, Peter Husby, Jennifer Suggs, and Benjamin Burns all were identified in Complainant's Initial Prehearing Exchange. Potential fact witness Emily Chen was identified in Complainant's Rebuttal Prehearing Exchange. All have information that relates to liability in this matter, and Complainant will not rely on their testimony to support the proposed penalty in this matter. Because all questions of liability have been answered and the only issue that remains is the narrow one of penalty, Complainant will not call these witnesses at the penalty hearing. Complainant therefore requests leave to strike their names and the brief narrative summaries of their testimony from Complainant's Prehearing Exchange.

Potential fact witness Stan Culross was identified in Complainant's Initial Prehearing Exchange, and potential expert witness Robert Specht was identified in Complainant's Third Motion to Supplement the Prehearing Exchange. These witnesses had information about emissions tests performed at Lotus Engineering, Inc., on vehicles identified in Count 1 of the Amended Complaint. Those tests showed that the tested vehicles exceeded Clean Air Act emissions standards at the end of their useful life, and

[1] Complainant's decision not to call expert and fact witnesses listed above at the penalty hearing is premised on the assumption that such hearing will be limited to the issue of penalty only. If the issues settled by this Tribunal's Order on Accelerated Decision on Liability are allowed to be revived to become topics at the penalty hearing, Complainant wishes to reserve its right to further amend its list of witnesses to be called in its direct case.

constituted a basis for characterizing the violations identified in Count 1 as being of "major" egregiousness.

With this Motion, Complainant is revising its proposed gravity penalty calculation to characterize the violations identified in Counts 1 and 2 as being of "moderate" egregiousness rather than "major." Complainant no longer intends to call Mr. Culross or Mr. Specht to testify at the penalty hearing, and will not rely on their testimony to support the proposed penalty in this matter. Complainant therefore requests leave to strike Mr. Culross and Mr. Specht, and the brief narrative summaries of their testimony, from Complainant's Prehearing Exchange.

C. Revised Gravity Penalty Calculation

Complainant requests leave to amend its proposed penalty to reflect a downward revision to the gravity component of the penalty.[2] The penalty proposed in Complainant's Initial Prehearing Exchange characterized the violations identified in Counts 1 and 2 of the Amended Complaint as being of "major" egregiousness under the EPA's Clean Air Act Mobile Source Civil Penalty Policy ("Penalty Policy"), and consequently applied a multiplier of 6.5 to the per-vehicle base gravity calculation for those violations. Because emissions tests conducted on vehicles identified in Counts 1 and 2 suggest that some of the tested vehicles were not likely to exceed Clean Air Act emissions standards, Complainant has determined that for the purposes of the penalty calculation the violations in Counts 1 and 2 may be characterized as being of "moderate" egregiousness rather than "major." The multiplier for "moderate" violations is 3.25, half that used for "major" violations, resulting in a lower adjusted base per-vehicle gravity penalty for those violations. Penalty Policy at 17. Complainant has recalculated the proposed

[2] Complainant acknowledges that Respondents continue to dispute the measure of the economic benefit component in Complainant's penalty calculation, and have submitted a report prepared by their potential expert witness Jonathan Shefftz addressing that issue. Complainant is evaluating Mr. Shefftz's report and is not revising its calculation of the economic benefit component at this time.

penalty to reflect the lower adjusted base per-vehicle gravity penalty amounts for Counts 1 and 2. Doing so altered the order in which the gravity amounts for the violations in different Counts were scaled, resulting in new proposed gravity components for Counts 1 through 8.[3] *See id.* at 17-20 (explaining scaling process for multiple violations).

Complainant is also revising downward the gravity calculation for the violations identified in Count 6 to reflect a lower horsepower rating for the vehicles in violation. The COC application for engine family DTAOX0.15G2T, to which the vehicles identified in Count 6 purportedly belonged, indicates that the engine family contains two models, with two different power ratings. *See* CX006, at EPA-000194. Previously, Complainant inadvertently calculated the gravity penalty for the violations identified in Count 6 using the larger of the two power ratings. Complainant is revising the gravity calculation for the violations identified in Count 6 to use the average power rating of the two models, resulting in a lower base per-vehicle gravity penalty for the violations.

A revised Proposed Penalty Calculation narrative is provided as Attachment A to this Motion. In addition, Complainant is filing a Revised Penalty Calculation Worksheet exhibit marked at CX193, which supersedes the previous Penalty Calculation Worksheet previously filed as CX160. Pursuant to Complainant's revised penalty calculation, Complainant seeks a civil penalty of $1,155,945 against Taotao USA, Inc. and Taotao Group Co., Ltd., jointly and severally, for the 67,527 violations alleged in Counts 1 through 4 of the Amended Complaint, and a civil penalty of $1,874,375 against Taotao USA, Inc. and Jinyun County Xiangyuan Industry Co., Ltd., jointly and severally, for the 42,437 violations alleged in Counts 5 through 10 of the Amended Complaint, for a total civil penalty of $3,030,320 for the

[3] The gravity components for Counts 9 and 10 were not affected because the violations identified in those counts were scaled separately. *See* Attachment A, at iv.

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.

D. Exhibit CX190 as Confidential Business Information

Complainant's exhibit CX190 provides a table summarizing the declared value of Taotao USA, Inc.'s importations for years 2009 through 2016, based on searches of the United States Customs and Border Patrol's ("CBP") Automated Commercial Environment ("ACE") database regarding Respondents' importations for years 2009 to 2016. Information in this exhibit is being treated as CBI in this Proceeding. CX190 was inadvertently filed without CBI identification, and not under seal, as part of Complainant's Third Motion to Supplement the Prehearing Exchange. A revised version of CX190, marked as CX190A and CBI, is being filed under seal with this Motion. In addition, a placeholder to stand for CX190A in the public record is provided as Attachment B to this Motion. Complainant requests leave to replace CX190 with CX190A under seal, and to replace CX190 in the publicly-available record with the placeholder in Attachment B to this Motion.

Conclusion

Granting this request to supplement the Prehearing Exchange will not cause Respondents undue surprise or prejudice. The amended narratives of Cleophas Jackson and Amelie Isin simply provide further clarity as to the matters that the witnesses will testify to at the penalty hearing. Respondents have not yet deposed Mr. Jackson or Ms. Isin, and the revisions to the narratives will not prejudice Respondents' ability to depose Mr. Jackson or Ms. Isin. Removing the witnesses that Complainant does not intend to call as part of its direct case at the penalty hearing will narrow and simplify the issues for hearing, and will not cause Respondents undue surprise or prejudice. The revision to the penalty calculation reduces Complainant's penalty demand, and does not unduly prejudice Respondents. Nor does identifying CX190 as CBI and replacing it with CX190A cause Respondents any undue prejudice.

Pursuant to § 22.19(f) of the Consolidated Rules, Complainant requests the Tribunal grant this Fourth Motion to Supplement the Prehearing Exchange.

Respectfully Submitted,

7/31/17
Date

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7/31/2017
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CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Fourth 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 revised exhibit CX190, marked CX190A, 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 Fourth 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.

7/31/17
Date

Robert J. Klepp

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COMPLAINANT'S FOURTH MOTION TO SUPPLEMENT THE PREHEARING EXCHANGE

ATTACHMENT A

REVISED PROPOSED PENALTY CALCULATION

Complainant seeks a civil penalty of $1,155,945 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 $1,874,375 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 $3,030,320 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, imported, 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.

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 July 21, 2017) (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 revised penalty calculation is provided as exhibit CX193.

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§ 7547(d) (standards applicable to nonroad vehicles shall be enforced in the same manner as those for motor vehicles).

[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).

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.[3] *Id.* at 8–9. Using 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").[4]

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 engine family. *Id.* at 16. The horsepower was determined by multiplying the power rating for each engine family identified in the Amended Complaint, provided in the COC application for each engine family in kilowatts, by 1.34 to convert the power rating from kilowatts to horsepower. Where an engine family contained different models with different power ratings, the average of the power ratings was used.

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

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[3] In their Joint Prehearing Exchange, Respondents argued that the Complainant incorrectly utilized the rule of thumb when calculating the proposed penalty in this matter. Respondents' Joint Prehearing Exchange at 7. Specifically, Respondents contend that the Penalty Policy states that the rule of thumb should not be used in cases where there is likely to be a hearing on the amount of the penalty. *Id.* However, the Policy explains that the rule is appropriate to use when information regarding the actual economic benefit is not available. Penalty Policy at 4. Complainant acknowledges that Respondents have submitted a report prepared by their potential expert witness Jonathan Shefftz addressing economic benefit. Complainant is evaluating Mr. Shefftz's report and is not revising its calculation of the economic benefit component at this time.

[4] 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.

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.[5] *Id.* at 13, 17. This multiplier was used for Counts 9 and 10 because the Complainant 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 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 imported after the Notice of Violation was issued in 2013.[6]

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. *Id.* 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 per-vehicle total gravity for each count after scaling,

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[5] "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.

[6] "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.

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.2. 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 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 information including T-USA's financial statements which were analyzed and adjusted to address significant accounting issues, Respondents' public statements regarding their business operations, and Respondents' importation history, Complainant has determined that the penalty should not be reduced due to its impact on Respondents' ability to continue in business. *See id.* at 27 (factors concerning ability to pay); CX035 (boasting of global sales and annual revenues exceeding $100 million); CX040 (interview with Matao Cao regarding Taotao's sales financial condition and market share); CX189 (volume and declared value of Respondents' vehicles in violation); CX190A (volume and declared value of Respondents' imports); CX191 (summary of the factory); CX192 (expert witness report on T-USA's financial condition); *see also* 42 U.S.C. § 7524(c)(2) (statutory penalty factors).

For the foregoing reasons, the Complainant respectfully requests that the Tribunal assess a civil penalty of $1,155,945 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 $1,874,375 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 $3,030,320 for the 109,964 violations of Title II of the Clean Air Act identified in Counts 1 through 10 of the Amended Complaint.

A worksheet illustrating the Complainant's revised penalty calculation is submitted as CX193.

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COMPLAINANT'S FOURTH MOTION TO SUPPLEMENT THE PREHEARING EXCHANGE

ATTACHMENT B

PUBLIC PLACEHOLDER FOR CX190A

CX190A

Updated Taotao Importations Since January 2009 and Graph

Bates EPA-002517A to EPA-002517A

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.